remain in full force and effect for a period of fifteen (15) years hereafter, reckoning the said fifteen years from the date of the execution of this agreement, or as long as the lumber companies or either of them shall operate their mills in said Parish of Calcasieu.

In witness whereof, each party hereto has caused this agreement to be signed by its proper officer and its corporate seal to be hereto affixed and attested the day and year first above written.

Executed in seven parts.

[SEAL.] COLORADO SOUTHERN, NEW ORLEANS & PACIFIC RAILROAD COMPANY,
By C. CORDILL, *President.*

Attest:
WM. C. DUFOM, *Secretary.*

[SEAL.] ST. LOUIS & SAN FRANCISCO RAILROAD CO.,
By A. J. DAVIDSON, *President.*

Attest:
F. H. HAMILTON, *Secretary.*

[SEAL.] LOUISIANA & PACIFIC RAILWAY CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

125 [SEAL.] KING-RYDER LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] HUDSON RIVER LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] CALCASIEU LONG LEAF LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

[SEAL.] LONG-BELL LUMBER CO.,
By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

(Here follow maps marked pp. 126 & 127.)

Note by the Clerk.

(Report of Interstate Commerce Commission Apr. 23, 1912. Supplemental report of Interstate Commerce Commission May 14, 1912, & amended Order of Interstate Commerce Commission Oct. 30, 1912, are omitted here in printing because printed elsewhere in a separate volume.)

128–305 Original.

No. 90.

Notice to the Attorney General.

(Filed January 7, 1913.)

United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

The President of the United States to Honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is hereby served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 7th day of January, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 7th day of January A. D. 1913 (Accepted by Blackburn Esterline).

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY,
Deputy Marshal.

306 **Original.**

No. 90.

Notice to Secretary of Interstate Commerce Commission.

(Filed January 7, 1913.)

United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

The President of the United States to John H. Marble as Secretary of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the office of the Secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 7th day of January, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon John H. Marble, Secretary of the Interstate Commerce Commission, this 7th day of January A. D., 1913.

F. J. STAREK, *Marshal.*
By JAMES L. MURPHY,
Deputy Marshal.

307 Original.

No. 90.

Summons to Railroad Respondents and Return of Service.

(Filed January 7, 1913.)

United States Commerce Court.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

The President of the United States to the above named Respondents:

You and each of you are hereby summoned and required within thirty days after service hereof to appear and answer unto a petition filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served upon you.

In case no answer shall be filed within the time named, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 7th day of January A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the above summons on Morgan's Louisiana & Texas Railroad & Steamship Company by leaving a copy thereof with C. H. Bates its designated agent, at The Westory Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to —— ——.

308 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the within summons on Louisiana Western Railroad Company by leav-

ing a copy thereof with C. H. Bates its designated agent, at The Westory Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to —— ——.

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the within summons on New Orleans, Texas & Mexico Railroad Company by leaving a copy thereof with Warren N. Akers its designated agent, at The Colorado Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to W. Guy Shreve.

309 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 7th day of January 1913, I served the within summons on St. Louis & San Francisco Railroad Company by leaving a copy thereof with Warren N. Akers its designated agent, at The Colorado Building the same being his office in the City of Washington, District of Columbia.

January 7, 1913.

F. J. STAREK, *Marshal,*
By JAMES L. MURPHY, *Deputy.*

Copy handed to W. Guy Shreve.

310 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieau Long Leaf Lumber Company, Longville Lumber Company, and the Long-Bell Lumber Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, Respondents.

Answer of the United States.

(Filed January 29, 1913.)

Comes now the United States, respondent, by its counsel, not waiving but insisting upon the insufficiency in law of the petition, and answers as follows upon information and belief:

I.

The order of the Interstate Commerce Commission sought by this petition to be set aside and annulled, and the report of the
311 commission rendered therewith, and the findings of fact stated in said order and report, were made upon due hearing and due investigation, and upon substantial and sufficient evidence and due consideration thereof.

II.

The Interstate Commerce Commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

III.

The Interstate Commerce Commission, after due hearing and upon substantial evidence, found that the tracks and equipment of the Louisiana & Pacific Railway Company with respect to the industry of the several proprietary lumber companies, are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills, and in moving the products of the mills to the trunk lines, is not a service of transportation by a common-carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations. Whether or not, as to other shippers, petitioner is a common carrier is immaterial.

IV.

Respondent denies the allegations on page 75 of the petition in so far as they imply that the trunk lines had universally, or even in a majority of instances, extended the blanket rate through the
312 mills of the tributary lumber companies to the trees in the forest, and calls attention to the finding of the Commission (23 I. C. C., 281, 282, 284, 297, and 298) to the effect that the majority of tap lines in this vicinity receive no allowances whatever for the tree-to-mill haul, and alleges that the said finding was based on substantial evidence.

V.

Respondent has no knowledge or information sufficient to form a belief as to the causes which induced the trunk line railroads to cancel their allowances to petitioner or whether said trunk lines would continue to pay said allowances were it not for the order of the Commission herein complained of.

VI.

Respondent denies that the Commission's order herein complained of permits other tap lines to receive allowances from trunk line railroads for services rendered their proprietary companies which are substantially similar to the services rendered to its proprietary companies by this petitioner.

VII.

The contracts between the trunk line railroads and the petitioners described in the petition and set forth at length in the exhibits attached thereto and providing for the payment to the petitioner of divisions out of the joint rate for the transportation of the products of its proprietary lumber companies, are void in so far as they
313 conflict with the Act to regulate commerce or any lawful order of the Interstate Commerce Commission; they are also void because they bind the proprietary lumber companies to ship certain percentages of their entire product over the contracting trunk line railroads and thus these contracts constitute and unlawful device through which the trunk lines pay to the lumber companies a consideration in order to obtain said shipments. In any case it is not within the jurisdiction either of the Interstate Commerce Commission or of the Commerce Court to order specific performance of such contracts.

VIII.

The allegations on pages 5-21, inclusive, contain mere evidentiary matter which, in so far as it is inconsistent with the findings of the Interstate Commerce Commission or not contained therein or in the evidence upon which said findings were based, is irrelevant and immaterial.

IX.

For the purposes of this case, respondent admits the allegations of fact in the petition which are not denied or specifically referred to above and which are not inconsistent with the findings made by the order and report of the commission.

Wherefore, having fully answered this petition, this respondent prays that said petition be dismissed with costs.

WINFRED T. DENISON,
Assistant Attorney General.

January, 1913.

314 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners.

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents.

Answer of the Interstate Commerce Commission.

(Filed February 8, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition
315 contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

That there is a misjoinder of parties defendant, in that the act of Congress creating said court expressly provides that suits of this character shall be brought against the United States.

That this court has no jurisdiction of the controversy, matters and things respectively set forth in said petition, nor does it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

II.

This respondent admits that it made and entered the order set forth in said petition bearing date September 3, 1910, In the Matter of the Investigation and Suspension of Supplement No. 3 to I. C. C. No. 23; that it made and entered the order of January 16, 1912, set forth in said petition. It admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter—May 14, 1912—it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C.
316 Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter, set forth in said petition.

This respondent admits the filing of the petition by L. M. Walter, attorney for petitioners, as set forth in said petition, and that thereafter, on October 30, 1912, this respondent, at the request of said petitioners, made and entered the amended order set forth in said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published reports, volume 17 (I. C. C. Rep.), beginning at page 338; and this respondent admits that the trunk lines, so called in said petition, withdrew their tariffs and filed new tariffs at the times and substantially in form as stated in said petition.

III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in
317 said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), beginning at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and respondent begs leave to make the same use of said published reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer.

IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners, or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

318 This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters
319 within the knowledge of the commission, and as to the other matters he believes it to be true.

[SEAL.] JAMES S. HARLAN.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 8th day of February, 1913.

GEORGE B. McGINTY,
Notary Public.

320 In the United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY, et al., Petitioners,
vs.
UNITED STATES OF AMERICA et al., Respondents.

Answer of the Louisiana Western Railroad Company.

(Filed February 6, 1913.)

The answer of the Louisiana Western Railroad Company to the complaint herein respectfully shows:

I. It admits the incorporation of the Louisiana & Pacific Railway Company, and is advised and believes that the same is a common carrier as alleged in clause 1 of the complaint. It admits, also, the correctness of the extracts in said clause from the constitution and laws of Louisiana.

It admits, upon information and belief, the correctness of the statements in clause 1 in regard to the location and mileage of the

lines of railway over which the Louisiana & Pacific Railway Company operates, the connections thereof with other lines of railroad, compliance with the rules and regulations of the State Rail-
321 road Commission of Louisiana and of the Interstate Commerce Commission and with the laws of the State of Louisiana and of the United States relating to common carriers by railroad, and its carrying a full line of class and commodity rates, state and interstate, and concurring in joint tariffs with connecting lines.

It has no knowledge, or sufficient information upon which to form a belief, as to the correctness of the statements in clause 1 in regard to the cost of the physical property of the Louisiana & Pacific Railway Company, or in regard to the details of its equipment or of its operating force, or as to the amount and character of its traffic other than traffic, outbound and inbound, for its co-complainants, or of the number and character of its stockholders and their relation or want of relation with corporations, individuals and industries on said line of railway, or as to the bonds issued and the holders thereof; and, neither admitting or denying said statements, it leaves complainants to make such proof thereof as they may be advised to make.

II. It admits, upon information and belief, the correctness of the statements contained in clauses 2 and 3 of the complaint.

III. It admits the general correctness of the statements contained in clause 4 of the complaint in respect to this respondent, the Louisiana Western Railroad Company, and its co-respondent, the Morgan's Louisiana & Texas Railroad and Steamship Company. Said respondents, however, are each an independent, separately organized and existing railroad corporation, operated by its own officers and agents.

322 It has no concern with the statements in clauses 4 and 5 in regard to its co-defendants, the New Orleans, Texas & Mexico Railway Company and the St. Louis & San Francisco Railroad Company.

IV. It is advised and believes that the references in clause 6 of the complaint to the investigations and reports of the Interstate Commerce Commission in Star Grain and Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, are correct.

V. It admits and avers that, by reason of the report or opinion mentioned in the preceding clause of this answer, and by reason of the belief, induced by said report and the action of the said Commission and its members, or some of them, that otherwise its officers and agents would be subjected to criminal prosecution at the instance of the said Commission as for alleged rebates or unlawful discriminations, respondent, about August, 1910, filed with said Commission new tariffs, as supplemental tariffs, on lumber, to become effective in thirty days, which new tariffs canceled all joint tariffs which respondent had theretofore had and maintained with complainant, the Louisiana & Pacific Railway Company.

VI. It admits the general correctness of the statements contained in clauses 8, 9 and 10 of the complaint respecting the further orders, proceedings, argument and reports in the so-called "Tap Line" case, and begs leave to refer to the original proceedings and record

for a more full statement thereof, should the same become necessary.

VII. It admits the general correctness of the statement
323 contained in clause 11 of the complaint respecting the petition filed by complainants in this court on June 21, 1912, the dismissal thereof, and the subsequent application to the Interstate Commerce Commission and the order thereon of October 30, 1912.

VIII. It admits, upon information and belief, the correctness of the statement in clause 12 of the complaint in respect to the tariffs on lumber to which the said Louisiana & Pacific Railway Company was a party on April 30, 1912, but it reserves leave to refer, if need be, to said tariffs on file with said Commission.

IX. For want of sufficient knowledge or information, it neither admits or denies the statements in clause 13 of the complaint relating to the properties, business, plans and intentions, prior to October 31, 1896, of the several complainants herein and leaves complainants to their proof thereof.

It admits that on October 31, 1906, the said Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company entered into an executory contract under which the former was to complete the construction of a broad gauge railroad from De Ridder to Fulton (or Ramsay Junction) and the latter to construct a broad gauge road from Fulton to Lake Charles, and then the former would sell to the latter at cost the road between De Ridder and Fulton, and the right of way and such other rights as it had between Fulton and Lake Charles, the seller to have certain trackage rights over the said road between De Ridder and Lake Charles; and it admits and avers that the said executory contract was carried out and performed by a notarial contract of sale passed at New Orleans,
Louisiana, on February 21, 1908, before Felix J. Puig, notary
324 public, and by a contract under private signature on the same date between the same parties, i. e., the said Louisiana & Pacific Railway Company and the Lake Charles & Northern Railroad Company, whereby the former was given certain joint trackage rights over the said line of railroad between De Ridder and Lake Charles. It reserves the right, if need be, to refer to the originals or to verified copies of said contracts for a more full and detailed statement of their terms and conditions and of the matters covered thereby.

X. It admits the general correctness of the statements in clause 14 of the complaint in respect to "blanket rates" on lumber in the lumber producing districts of the South.

XI. It admits the execution on October 31, 1906, of a tripartite agreement between this respondent, the said Louisiana & Pacific Railway Company, and the Lumber Companies, complainants herein, which was of the general tenor and effect as stated in clause 15 of the complaint.

XII. It avers that the Longville Lumber Company, not originally a party to said tripartite agreement, has been allowed to conform to its provisions and requirements and accordingly to participate in its benefits.

XIII. It has no concern or interest in the statements of clause

17 of the complaint relating to contracts between the complainants and the New Orleans, Texas & Mexico Railroad Company and with the St. Louis & San Francisco Railroad Company, and relating to what has been done by complainants on the faith of said contracts.

325 XIV. For want of sufficient knowledge or information, it neither admits nor denies the statements in clause 18 in regard to the money expended or the property acquired on the faith of said contracts with the defendant railroad companies.

XV. It admits the statement in clause 19 of the complaint, that this respondent canceled the said through rates and divisions, not voluntarily, but under compulsion of the decisions of the Interstate Commerce Commission and the fear of criminal prosecution.

It says that the other matters and things in said clause, being charges against the correctness of the report of the said Commission and its power and authority, concern its co-defendant, the United States, and this respondent asks to be allowed to leave the defense thereof to said co-defendant.

XVI. Answering the remaining clauses of said complaint, this respondent says that the Interstate Commerce Commission having declared that the division of rates between it and the Louisiana & Pacific Railway Company was illegal, it was obliged to act as it did, and cancel the same.

XVII. It denies all the other matters and things in said complaint contained, not hereinabove admitted.

Wherefore, this respondent, the Louisiana Western Railroad Company, prays the court to be hence dismissed with its costs, and for such other and general relief in the premises as to this court may seem meet.

H. A. SCANDRETT,
J. P. BLAIR,
Solicitors for Louisiana Western Railroad Co.

326 United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY et als.
vs.
UNITED STATES et al.

Demurrer of the Morgan's-Louisiana and Texas Railroad and Steamship Company.

Filed February 3, 1913.

This defendant, by protestation, not confessing or acknowledging any of the matters in the complaint herein to be true, doth demur thereto, and for cause of demurrer showeth that complainants have not in their complaint made or stated any such cause as ought to en-

title them or any of them to any relief against this defendant, nor do they seek any relief against it.

Wherefore this defendant demurs thereto, and asks the judgment of this court as to whether it shall be compelled to make any
327 further or other answer to the said bill; and it prays to be hence dismissed with its costs.

H. A. SCANDRETT,
J. P. BLAIR,
Sol'rs for Above-named Defendant.

St. Denis J. De Blanc, being duly sworn, deposes and says that he is secretary of the said Morgan's Louisiana and Texas Railroad and Steamship Company, and that the foregoing demurrer is not interposed for delay.

ST. D. J. DE BLANC.

Subscribed and sworn to before me this 30th day of January, 1913.

[SEAL.] ANDREW OVERO, (?)
Not. Pub.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

J. P. BLAIR,
Of Counsel for Morgan's La. & Tex. R. R. & S. S. Co.

328 In the United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Joint Answer of Respondents, New Orleans, Texas & Mexico Railroad, and St. Louis & San Francisco Railroad Company.

(Filed February 6, 1913.)

Now come New Orleans, Texas & Mexico Railroad and St. Louis & San Francisco Railroad Company, respondents herein, and for answer to the petition herein, respectfully show:

1. They admit the incorporation of the Louisiana & Pacific Railway Company, hereinafter called the Louisiana Company, and are informed and believe that said company is incorporated under the laws of the State of Louisiana providing for the formation of
329 common carrier railroad corporations, and also admit the correctness of the extracts in Paragraph 1 of the petition herein from the Constitution and Laws of the State of Louisiana.

They admit upon information and belief the correctness of the statements in Paragraph 1 in regard to the location and mileage of the lines of railway over which the Louisiana Company operates, and the connections thereof with other lines of railroad. They have no knowledge or sufficient information upon which to form a belief as to the correctness of the statements in Paragraph 1 of the petition as to compliance with the rules and regulations promulgated by public authorities, or the carriage of a full line of class and commodity rates between points on its own line in Louisiana, but admit that it concurs in joint tariffs on some commodities between points on its road and points on the line of these respondents, but denies that the Louisiana Company has a full line of rates on all commodities to all interstate territory; they have no knowledge or sufficient information upon which to form a belief as to the correctness of the statements in Paragraph 1 of the petition in regard to the cost of the physical property of the Louisiana Company, or the details of its equipment, or of its operating force, as to the amount and character of its traffic, the number or size of the cities, towns, villages or stations located thereon, the number or character of the industries located thereon, or adjacent thereto, the number and character of its stockholders and their relation, or want of relation with corporations, individuals and industries on said line of railway, or as to the bonds issued thereby and the holders thereof.

2. They admit upon information and belief the correctness of the statements contained in Paragraph 2 of the petition.

330 3. They admit upon information and belief the correctness of the statements contained in Paragraph 3 of the petition.

4. They admit that respondent New Orleans, Texas & Mexico Railroad is a railroad corporation of the State of Louisiana and a part of what is known as the "Frisco System," but deny that it owns or operates any line of railroad within the State of Texas, and aver that the line of railroad operated by it extends from New Orleans and Baton Rouge to the boundary line between the States of Louisiana and Texas. These respondents have no concern with statements in Paragraph 4 of the petition respecting their co-respondents herein.

5. They admit that the St. Louis and San Francisco Railroad Company is a railroad corporation organized under the laws of the State of Missouri, owning and operating railroads in the States of Arkansas, Missouri and elsewhere, but deny that the St. Louis and San Francisco Railroad Company owns or operates lines of railroad in the States of Louisiana and Texas.

6. They admit the allegations of Paragraph 6 of the petition.

7. Answering Paragraph 7 of the petition they aver that by reason of the report or opinion of the Interstate Commerce Commission (hereinafter called the Commission), referred to therein, and by reason of the belief, induced by said report and the respondents' understanding of the opinion and attitude of Commission with respect to the subject-matter thereof, that otherwise the re-

331 spondents, their officers and agents would be subject to criminal prosecution at the instance of the Commission as for

alleged rebates or unlawful discriminations, respondents, about August, 1910, filed with the Commission new tariffs, as supplemental tariffs, on lumber, to become effective in thirty days, which new tariffs cancelled all joint tariffs which respondents had theretofore had and maintained with complainant, the Louisiana and Pacific Railway Company.

8. They admit the general correctness of the statements contained in Paragraph 8 of the petition, and beg leave to refer to the original proceedings and record for full statement thereof, should the same become necessary.

9. They admit upon information and belief the allegations of fact contained in Paragraph 9 of the petition herein.

10. They admit upon information and belief the general correctness of the statements contained in Paragraph 10 of the petition respecting the orders and reports of the Commission, and beg leave to refer to the original proceedings and record for a more full statement thereof, should the same become necessary, and for the legal effect thereof.

11. They admit the general correctness of the statements contained in Paragraph 11 of the complaint respecting the petition filed by the petitioners in this court on June 21, 1912, the dismissal thereof and the subsequent application to the Commission and the order thereon of October 30, 1912.

12. They admit upon information and belief the correctness of the statements contained in Paragraph 12 of the petition
332 with respect to the tariffs on lumber to which the Louisiana Company was a party on April 30, 1912, but reserves leave to refer, if need be, to said tariffs on file with said Commission; but deny that the rates therein prescribed were reasonable through rates, and allege that said rates were unreasonably low.

13. They have no knowledge or information sufficient upon which to form a belief as to the correctness of the allegations of Paragraph 13 of the petition as to the prior history of the railroads now operated by the Louisiana Company, or as to the business, plans and intentions of the petitioners and the parties named in said Paragraph 13, with respect to the construction or consolidation of the properties therein named, or the incorporation of the railroad companies therein described, or of the sale therein referred to to the Lake Charles and Northern Railroad Company, or of the contract between said company and the Louisiana Company, but are informed and believe that such contract of sale was made, and that the Louisiana Company has trackage rights as therein alleged.

14. They admit the general correctness of the statement in Paragraph 14 of the petition in respect to blanket rates on lumber in the lumber-producing districts of the South.

15. They state that they have no knowledge or sufficient information upon which to form a belief as to the truth of the allegations of Paragraph 15 of the petition with respect to the contract therein alleged between the petitioners and the Louisiana Western Railway Company, and have no concern or interest therein.

333 16. They have no knowledge or sufficient information upon which to form a belief as to the truth of the allegations in Paragraph 16 of the petition contained, with respect to the actions of the Longview Lumber Company therein alleged, and have no interest or concern therein.

17. They admit the execution on October 13, 1906, of the contract between these respondents and the petition- as stated in Clause 17 of the petition.

18. They have no knowledge and have not sufficient information to form a belief as to the truth of the statements in Paragraph 18 of the petition with regard to the money expended or the property acquired or the contracts made on the faith of said contracts with the respondent railroad companies.

19. They admit that they cancelled the through rates referred to in the petition under and by virtue of the cancelling tariffs hereinbefore referred to by reason of the several reports, decisions and orders of the Interstate Commerce Commission hereinbefore referred to and under the belief, induced by said reports, decisions and orders, and their understanding thereof that if said joint through rates with the Louisiana Company were not cancelled, said respondent railroad companies, their officers and agents would be subject to criminal prosecution at the instance of the Commission as for alleged rebates and alleged unlawful discrimination. As to the legal effect of the various orders and actions taken by the Commission and set forth in Paragraph 19 of the petition herein, defendants refer to said orders themselves as specifically set out in the petition. They are
334 without knowledge or sufficient information to form a belief as to the truth of the statements contained in said Paragraph 19 as to the practices of the Louisiana Company and of the manner in which it conducts its business, and say that the other matters and things in said paragraph contained, being charges against the correctness of the findings of fact and conclusions of law contained in the report of the Commission, and averments respecting the validity of the order of the Commission and its power and authority concern their co-respondent, the United States of America, and these respondents ask to be allowed to leave the defence thereof to said co-respondent.

20. They deny that their action in filing the supplemental tariff referred to in Paragraph 20 of the petition was in violation of the act to regulate commerce and allege that the Commission having held through rates and divisions with the Louisiana Company to be unlawful it was right and proper for these respondents to file said supplemental tariffs for the reasons heretofore given.

21. They are without knowledge or sufficient information to form a belief as to the truth of the statements of facts contained in Paragraph 21 of the petition.

22. They deny all the other matters and things in the petition contained not hereinabove admitted.

Wherefore these respondents pray the Court to be hence dismissed

with their costs and for such action and general relief in the premises as to this Court may seem meet.

W. F. EVANS,
FRED H. WOOD,
Solicitors for Respondents Above Named.

335 In the United States Commerce Court.

No. 90.

THE LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Petition of Intervention of the Railroad Commission of Louisiana.

(Filed February 10, 1913.)

To the Honorable the Judges of the United States Commerce Court:

The Railroad Commission of Louisiana, a political corporation organized under and by virtue of the laws of the State of Louisiana, composed of Shelby Taylor, Chairman; Henry B. Schreiber and B. A. Bridges, Commissioners, of which Henry Jastremski
336 is the Secretary, having its domicile in the city of Baton Rouge, State of Louisiana (hereinafter called petitioner), by leave of the Court join- and file- this, its petition of intervention in the above-numbered and entitled cause.

I.

Petitioner is organized under the provisions of Articles 284 to 289, inclusive, of the Constitution of Louisiana, and of the Acts of the Legislature amendatory thereto and supplemental thereof, and it is its duty to adopt, change or make reasonable and just rates, charges and regulations to govern and regulate railroad * * * freight and passenger tariffs and service, * * * to correct abuses and to prevent unjust discrimination and extortion in the rates for the same, on the different railroads * * * of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, * * * for a shorter than a longer distance over the same lines, unless authorized by the Commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the
337 penalties prescribed inflicted through the proper Courts having jurisdiction.

II.

That acting under the authority of the Constitution and Laws of the State of Louisiana, petitioner has adopted and enforced, and is now enforcing numerous rules and regulations to regulate and govern the rates and service of common carriers operating in the State of Louisiana.

That acting under and by virtue of Act No. 195 of the General Assembly of the State of Louisiana of 1906, the Railroad Commission on January 31, 1913, adopted a resolution authorizing the filing of this intervention, a certified copy of which resolution is attached hereto as Exhibit "A," and leave is asked to file the same as part hereof.

III.

That Article 230 of the Constitution of Louisiana exempted for a period of ten years from the date of its completion any railroad or part of such railroad thereafter constructed and completed prior to January 1, 1904, and that this exemption from taxation was renewed and extended by Constitutional Amendment in 1904, for a period of ten years, to all railroads or parts of railroads constructed and completed subsequently to January 1, 1905, and prior to January 1, 1909, which exemptions from taxation was for the
338 purpose of encouraging railroad construction and extension in the State of Louisiana.

IV.

That Article 272 of the Constitution of Louisiana declares that: "Railways heretofore constructed, or that may be hereafter constructed in this State, are hereby declared public highways, and railroad companies common carriers,"

and this provision of the Constitution of Louisiana has been interpreted and defined by the Supreme Court of Louisiana to apply to any railroad with roadbed and crossties, and parallel rails on which steam locomotives draw regular trains for the transportation of passengers and freight.

That on or about the 8th day of December, 1910, petitioner filed a petition of intervention before the Interstate Commerce Commission, In the Matter of Tap Line Allowances and Divisions, Number 1319 on the docket of said Interstate Commerce Commission, on behalf of the people of the State of Louisiana. The petition alleged that "the lumber traffic on railroads operating in the State of Louisiana far exceeds, in volume, the traffic in any other commodity transported, the percentage of the tonnage of lumber, logs and staves transported by thirty-three of the sixty-six railroads reporting to the Railroad Commission of Louisiana for the year ending June
339 30, 1901, being over 60% of the entire tonnage hauled, and the percentage of the lumber, logs and staves transported by forty-six of the sixty-six railroads reporting to the Railroad Commission of Louisiana for the year ending June 30, 1910, being

greater than the tonnage of any other commodity transported by them." It was further alleged "that a larger percentage, which your petitioner cannot state with exactness, of the lumber traffic so moving over the railroads operating within the State of Louisiana, originates on the short line railroads connecting with the trunk lines, and is transported to various points in other States in the United States, and exported to foreign countries." The petition further states: "That the short line railroads have played a valuable and important part in the development of the State of Louisiana, and the policy of your petitioner has been to encourage their extension by establishing fair and reasonable rates on all classes of freight, requiring them, in turn, to establish and maintain adequate and suitable train service, depots, and other facilities of travel and commerce." After alleging that the industrial and agricultural development has been greatly advanced by the building of short line railroads, many miles of which would not have been constructed except for the expected traffic in lumber and forest products, the petition alleges that the Railroad Commission of Louisiana believes that all railroads in the State of Louisiana, having a charter and operating regular trains, filing annual reports, filing and publishing tariffs, operating suitable and adequate trains, providing
339½ ample shipping facilities, and otherwise complying with and obeying all the orders, rules and regulations governing railroads operating in the State of Louisiana, should be allowed to charge a fair and reasonable rate, and earn fair returns on their investments, whether fair returns are derived from local or intrastate freight rates or from a division of freight rates made by agreement with connecting carriers, on both interstate and intrastate traffic.

That the Railroad Commission of Louisiana, through counsel, filed a brief and made oral argument, and the case was submitted on April 15, 1911. Thereafter, on April 23, 1912, the Commission handed down its partial report, and, on May 14, 1912, and on October 30, 1912, the Commission handed down its suplemental reports (being its Opinions Numbers 1853 and 1898), holding that the service performed for the proprietary lumber companies by certain tap lines described in the report is not a service of transportation by a common carrier.

V.

That among other short line railroads operating in the State of Louisiana, so declared by the said Interstate Commerce Commission not to be transportation companies, or common carriers, as to the service performed for the proprietary lumber companies, was the Louisiana & Pacific Railway Company, one of the petitioners in the above-entitled suit, a railway corporation duly incorporated under
340 the laws of the State of Louisiana, a common carrier, owning and operating a railroad between De Ridder, Louisiana, and Lake Charles, Louisiana, a distance of about forty-three miles, with several branches. That said Louisiana & Pacific Railway Company is and has been, since it began operations, engaged in both state and interstate commerce, having connections at Lake Charles, Louisiana,

with the Louisiana Western Railroad; at Fulton, with the New Orleans, Texas & Mexico Railroad; at Bon Ami, Lake Charles and De Ridder, with the Kansas City Southern Railway; at De Ridder with the Gulf, Colorado & Santa Fe Railway; at Lake Charles with the Saint Louis, Iron Mountain & Southern Railway. Said Louisiana & Pacific Railway Company is complying with the laws of Louisiana governing common carriers, and with the rates, rules and regulations and orders of petitioner, the Railroad Commission of Louisiana. It publishes and files with petitioner, the Railroad Commission of Louisiana, tariffs of rates on commodities, and the different classes of freight, applying locally between points on its own line, and it concurs in joint through rates, legally published and filed, applicable between points on its own line and points on connecting lines in Louisiana, and it also publishes and files tariffs of rates from and to interstate points, and under such tariffs freight moves freely. It operates regular trains, on wheih both passengers and freight are handled at regular tariff or statutory rates.

The Louisiana & Pacific Railway has been exempted from taxation for a period of ten years by the State Board of Ap-
341 praisers of the State of Louisiana, in accordance with the Constitutional provisions of the State of Louisiana, hereinabove referred to, applying to new railroads or parts of railroads constructed and completed within certain prescribed dates.

VI.

That under and by virtue of its charter, the Louisiana & Pacific Railway Company has a contract with the State of Louisiana to operate and maintain a railroad in the State of Louisiana, and it should be permitted to transport as a common carrier, and earn revenue upon all kinds and classes of freight that may be tendered or that may result from its development of the country through which it runs, and its contract with the State has been seriously threatened, and will be vitally affected and impaired by reason of an order of the Interstate Commerce Commission, from engaging in interstate transportation of logs, lumber and other forest products, and receiving out of joint through rates a division therefrom.

VII.

And the interests of the State of Louisiana are seriously affected by the orders of the Interstate Commerce Commission attacked in this cause, because the State has encouraged the building of railroads by exempting such roads as were built during certain periods
342 from taxation for ten years. The mileage of railroads in the State of Louisiana on June 30, 1909, was 4,950.55, an increase in the ten years during which the exemption ran, of 2,525.25 miles, a large portion of the increase in mileage having been constructed by the short line railroads, including the mileage of the Louisiana and Pacific Railway.

The Railroad Commission of Louisiana, petitioner, believes, and upon its belief, alleges, that the orders of the Interstate Commerce

mmission attacked herein, if allowed to remain in force, will stifle growth of the State, check the building and extension of short, ependent railroads, hamper and retard its agricultural and indus- l development, reduce its railroad mileage, destroy valuable prop- y at a time when the State of Louisiana is beginning to reap the efits of these investments by reason of the termination of the iod of exemption, by collection of taxes, on the Louisiana and ific Railway, as well as on other railways which will be affected the said orders of the Interstate Commerce Commission.

VIII.

That the said orders of the Interstate Commerce Commission de- y the right of the Louisiana shippers of logs and lumber from pping over the Louisiana and Pacific Railway under like condi- ns with other shippers, who enjoy joint through rates to and from interstate points from and to parties in the State of Louisiana, located on such railway, and likewise if continued in force, destroys the right of the Louisiana and Pacific Railway to gage in the transportation of interstate shipments of logs and lum- , under joint through rates, and divisions of such rates in accord- e with their contracts, which its charter, as a common carrier, der the laws of Louisiana, permits it to do. The said Louisiana l Pacific Railway Company is thereby prevented from giving to Louisiana shippers of logs and lumber manufactured therefrom advantages, opportunities, and conveniences almost universally oyed by shippers, of shipping under joint through rates, and the isiana and Pacific Railway Company, a Louisiana corporation, l other railways operated in Louisiana under similar circum- nces and conditions, the right of entering into contracts with con- ting lines of railways for joint through rates, and a division of h rates.

IX.

That the aforesaid orders of the Interstate Commerce Commission ce an undue and unnecessary burden upon the shippers of local rchandise freight transported by the Louisiana and Pacific Rail- y by denying to the Louisiana and Pacific Railway Com- ay the right to transport logs and lumber manufactured refrom to and from interstate points at established joint through es, and to receive a division out of such revenues as may be derived from such interstate traffic, in that the local rates on such merchandise, or the divisions received on the joint through rates from such merchandise, must bear all the burden of ring operating costs, the maintenance costs, the general expenses, fixed charges, the interest on the investment of such railway. is will result in unjust discrimination against the shipper of local ight, other than logs and lumber, whereas, the logs and lumber nsported by such railway should contribute its fair share of the enue of the Louisiana and Pacific Railway, and not throw upon local shippers of freight other than logs and lumber the burden paying rates high enough to pay all the necessary costs of oper- ng and maintaining the Louisiana and Pacific Railway.

X.

Petitioner further avers that the order of the Interstate Commerce Commission aforementioned destroys the guarantee of the Declaration of Independence, of equal rights to all, and impairs the obligation of the contract existing between the State of Louisiana and the Louisiana and Pacific Railway Company, to operate and maintain a railroad, and engage in both state and interstate commerce, wherefore considering the premises and the matters and things hereinbefore set forth, petitioner says:

1. That the orders of the Interstate Commerce Commission in the Tap Line case, in so far as they effect the right of the Louisiana and Pacific Railway Company and other railway companies similarly organized under the laws of Louisiana and operating as com-
345 mon carriers in said State, were made without power or authority either directly or indirectly conferred upon it by the Act to Regulate Commerce or any amendment thereto or supplement thereof, or by any other law of the United States, the Commission having no jurisdiction to prevent a railroad corporation lawfully incorporated under the laws of the State of Louisiana as a common carrier and operating its railroad accordingly, from engaging in the transportation of logs and lumber to and from interstate points, on the ground that the principal shippers of the logs and lumber so transported own or control the railroad.

2. That for the reasons above set forth the Order of the Interstate Commerce Commission aforementioned, declaring that the service performed for proprietary lumber companies by certain Tap Lines described in its report is not a service of transportation, is unjust, unreasonable, discriminatory, unconstitutional, and therefore null and void.

XI.

Wherefore, petitioner prays that the service of this petition be made on respondents herein commanding them to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondents, on the Attorney-General of the United States, and on the Interstate Commerce Commission; that upon the hearing hereof the said orders of the Interstate
346 Commerce Commission of May 1st and May 14th, 1912, and of October 30, 1912, in the Tap Line case, be enjoined, set aside, and held for naught; that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives be forever enjoined from enforcing said order or taking any steps or instituting any proceedings for the enforcement thereof, and petitioner prays for all general and equitable relief.

RUFFIN J. PLEASANT,
Attorney-General of the State of Louisiana;
WYLIE M. BARROW,
Assistant Attorney-General,
Solicitors for the Railroad Commission of Louisiana.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

I, Shelby Taylor, Chairman of the Railroad Commission of Louisiana, upon my oath, state that I am authorized to make this affidavit; that I have read the foregoing petition, and that the allegations of fact set forth therein are true, and the allegations made upon information and belief I believe to be true.

SHELBY TAYLOR.

Sworn to and subscribed before me, the undersigned authority, this, the 7th day of February, 1913, A. D.

[SEAL.] R. H. FLOWER,
Assistant Secretary of State, Parish of East Baton Rouge, City of Baton Rouge, State of Louisiana.

347 *Resolution.*

On motion of Commission- Taylor, duly seconded, the following resolution was unanimously adopted:

"Whereas, The Commission has learned that various suits have been filed in the Commerce Court at Washington, D. C., by the so-called 'tap lines' operating in the State of Louisiana; and,

"Whereas, The following so-called 'tap lines,'

Mansfield Railway & Transportation Company,
Woodworth & Louisiana Central Railway Company, Limited,
Victoria, Fisher & Western Railroad Company, and
Louisiana & Pacific Railway Company

are among those 'tap lines' which have filed such suits, and which railways are duly chartered under the laws of the State of Louisiana as common carriers, and which, in fact, operating as common carriers in the said State, are under the supervision and control of the Railroad Commission of Louisiana; and,

"Whereas, The said suits in the Commerce Court have been filed for the purpose of contesting the orders of the Interstate Commerce Commission, declaring that, in substance, such 'tap lines' are not common carriers as to the logs and lumber which they transport for their proprietary lumber companies; and,

"Whereas, This Commission is of the opinion that this decision of the Interstate Commerce Commission is an unconstitu-
348 tional interference with the rights of the said railway companies to receive revenue out of joint through rates for the transportation of lumber and logs over their lines in Louisiana destined to interstate points; and,

"Whereas, It is the opinion of this Commission that the decision of the Interstate Commerce Commission in the 'tap line case' is detrimental to the interests of the shippers of the State of Louisiana, and deprives the shippers, served by said railway companies, of the right

to ship logs and lumber over said railways at reasonable joint through rates, and deprives the said railway companies from receiving a reasonable division out of joint through rates, which division of rates is the principal source of revenues of such carriers; and,

"Whereas, If the said companies are not permitted to receive divisions of joint through rates on lumber and logs, they will be deprived of revenues for transporting the said logs and lumber, thereby rendering it impossible to meet the operating expenses and fixed charges, and consequently preventing any extension, or hope of extension, or improvement, or hope of improvement of such railways:

Therefore, be it resolved, That the Railroad Commission of Louisiana, in behalf of the shippers of the State of Louisiana, hereby authorizes and instructs its attorney, the Assistant Attorney-General of Louisiana, to intervene in the Commerce Court in the cases filed by the railway companies, hereinabove named, in support of their petitions, and to aid and assist, in every way possible, in having the Court recognize the said railway companies as common car-
349 riers of interstate shipment of logs and lumber, as they are recognized to be common carriers of all other classes and kind of shipment."

I, Henry Jastremski, Secretary of the Railroad Commission of Louisiana, do hereby certify the above and foregoing as a true and correct copy of the Resolution adopted by the Railroad Commission of Louisiana at the general session held in the city of New Orleans on January 31, 1913.

In testimony whereof, I have hereunto affixed my signature and the seal of the Railroad Commission of Louisiana, at Baton Rouge, La., on this 7th day of February, 1913.

[SEAL.] HENRY JASTREMSKI, *Secretary.*

350 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
THE UNITED STATES OF AMERICA et al.

Order of Intervention.

(Entered February 10, 1913.)

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and

it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervener and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

351 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Petition for Leave to Intervene.

(Filed February 10, 1913.)

Come now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and say that they were parties to the original proceeding before the Interstate Commerce Commission, out of which the above entitled litigation springs, and that they are interested directly and financially in any disposition of this cause, and therefore they ask an order allowing them to intervene and to be heard in all proceedings in said cause, and to have the benefit of all orders and decrees that may be entered herein.

Your intervening petitioners further state that they are common carriers by railroad with rails extending from extensive lumber producing territory to various markets; that the milling industries located upon the railroads of intervening petitioners are competitors with the milling industries located upon the line- of petitioners; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervening petitioners and the milling industries located upon the lines of petitioners are known as the blanket system of rates.

352 Your intervening petitioners further state that they make no allowance or division of through rates to tap lines or to milling industries on the lines of intervening petitioners, and as a result the milling industries located upon the lines of intervening petitio ers are required to pay in full the lawfully published tariff rate on lumber. Your intervening petitioners further state that the allowance to said petitioners of a division of the through rate will give said petitioners an undue advantage over the milling industries

located upon the lines of intervening petitioners, and will constitute an unjust discrimination against such milling industries located upon the lines of intervening petitioners, and will be in violation of the Interstate Commerce law.

Your intervening petitioners further state that any allowance by the respondents herein will not be in truth an allowance to a railroad for the service of transportation of lumber but on the contrary will be an allowance to the milling industry for an operation incident to the manufacture of lumber, and will constitute a device for the payment of a rebate to a shipper, in violation of the Interstate Commerce Law.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
GULF, COLORADO AND SANTA FE RAILWAY COMPANY,
By ROBERT DUNLAP,
T. J. NORTON,
JAMES L. COLEMAN,
Their Attorneys.

February 10, 1913.

353 In the United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
THE UNITED STATES et al.

Order of Intervention.

(Entered February 10, 1913.)

The Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That the Atchison, Topeka and Santa Fe Railway Company, and Gulf, Colorado and Santa Fe Railway Company be and they are hereby allowed to intervene and become parties intervener and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said interveners to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said interveners and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

354 *Journal Entry.*

Proceedings of February 10, 1913.

Cases Nos. 90, 91, 92, 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION, Intervener.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION, Intervener.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Thereupon these causes came on for hearing upon the motion of the United States to dismiss for want of jurisdiction in open court made, and the arguments of counsel were concluded, Mr. Assistant Attorney General Denison and Mr. Blackburn Esterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. Luther M. Walter and Mr. H. M. Garwood on behalf of the petitioners, Mr. James L. Coleman on behalf of the intervening carriers, and Mr. Wylie M. Barrow on behalf of the Railroad Commission of Louisiana. Thereupon the cause was taken under advisement by the Court.

355 United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

(Entered February 24, 1913.)

The above entitled cause came on for hearing before the Court on February 10, 1913, at Washington, D. C., upon the motion of the United States to dismiss for want of jurisdiction, in open court made; and the Court having given the arguments of counsel due consideration, now, on the 24th day of February, 1913,

It is ordered and adjudged that said motion be, and the same is hereby, denied, the Court being of opinion that the order complained of is an order the validity of which this Court has jurisdiction to determine at the suit of the petitioners. The Court, however, in so deciding, in no way passes upon the merits of the case presented by the petition filed.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

356 United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order Designating Judge Carland to Hear Testimony.

(Entered March 5, 1913.)

In said cause it is ordered that the Honorable John E. Carland, Associate Judge of this court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,
Presiding Judge.

357 *Agreement, October* 31, 1906, *Louisiana Western Railroad Company, Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company.*

(Filed in Clerk's Office March 22, 1913.)

(Copy of this agreement is attached to the petition herein as Exhibit A.)

Agreement, October 13, 1906, *Colorado Southern, New Orleans & Pacific Railroad Company, St. Louis & San Francisco Railroad Company, Louisiana & Pacific Railway Company, King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company.*

(Filed in Clerk's Office, March 22, 1913.)

(Copy of this agreement is attached to the petition herein as Exhibit B.)

358 United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

This agreement, made and entered into this 31st day of October, Nineteen Hundred and Six, by and between the Louisiana and Pacific Railway Company, party of the first part, and the Lake Charles and Northern Railroad Company, party of the second part, both of said corporations being organized under the laws of the State of Louisiana—

359 Witnesseth: The said party of the first part is the owner of a line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River at or near the Northwest corner of Section Ten, Township Nine, Range Eight, in Calcasieu Parish, State of Louisiana. That part of said line of road lying between Ramsay Junction and said point on Calcasieu River has been completed, but is a narrow gauge road. Of the remainder of said line of road, that is, that portion lying between De Ridder and Ramsay Junction, a portion has been completed and the other portion is now being constructed.

The said first party also owns a right of way for a railroad from Lake Charles to a point on said narrow gauge road near the northeast corner of Section Thirty-two, Township Eight, Range Eight, in said Parish and State.

The said second party desires to purchase said first party's said line of road from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles to the junction with said narrow gauge road in said Section Thirty-two; and said first party is willing to sell its said road and said right of way, on condition

that it can have the joint use of said line of road from De Ridder to Lake Charles, which condition is not objectionable to said second party.

Now, therefore, in consideration of the foregoing premises, and the covenants and agreements to be kept and performed by the parties hereto, respectively, as herein set forth, the said parties do hereby agree and bind themselves as follows:

1. The said first party agrees to sell and said second party agrees to buy said line of railroad from De Ridder to said point on the Calcasieu River and said right of way from Lake Charles to said junction point in Section Thirty-two.

The purchase price of said property shall be a sum equal to Fifteen Thousand ($15,000.00) Dollars, (which is the agreed value of said narrow gauge portion of said line of road, and said right of way from Lake Charles to the aforesaid junction point), plus the total actual cost of that portion of said line of railroad between De Ridder and Ramsay Junction, including the cost of all yards, round-houses, section-houses, tool-houses, depots, shops, right of way, grading, ties, rails, etc., and other appurtenances—such cost to be ascertained by reference to the books of said party of the first part, to be verified by the engineers of the parties hereto. Of such purchase price, the said second party shall pay said first party the sum of Ninety Thousand ($90,000.00) Dollars, at the time of the execution and delivery of this agreement; and the balance shall be paid monthly as the work of construction progresses, on estimates to be furnished by the engineer of the said first party, and verified by the engineer of the said second party, the final amount to be ascertained and determined from the records of the said first party by the engineers of both parties.

2. The said property which the said first party agrees to sell, and which the said second party agrees to buy, as above set forth, shall include the said right of way from Lake Charles to the said
360 junction of the said right of way with the narrow gauge portion of said road in said Section Thirty-two, and the right of way, roadbed, tracks, yards, depots, round-houses, section-houses, tool-houses, shops, and everything pertaining to the line of road of said first party from De Ridder to said point on the Calcasieu River in Section Ten, except the Thirty and Thirty-five pound steel on the narrow gauge portion of said line of road, and except the rolling stock of said first party.

3. The said first party shall, as soon as can reasonably be done, but not later than July 1, 1907, complete the construction of the roadbed, tracks and side-tracks of said portion of said line of road between De Ridder and Ramsay Junction, putting same in the condition usual for roads of similar character, and shall on the completion of said line of road convey by good and sufficient deed to said second party the property contracted to be sold as herein set forth.

4. The said second party shall, at its own cost and expense, as soon as can reasonably be done (it being the hope and expectation of both parties that the work will be completed not later than July 1, 1907), change to a standard gauge road that part of the narrow gauge por-

tion of said road lying between Ramsay Junction and said junction in said Section Thirty-two of said right of way to Lake Charles, and also build from said last named junction to Lake Charles a standard gauge road and connect the same at Lake Charles with the line of the Louisiana Western Railroad Company, and also with the Mills of the Calcasieu Long Leaf Lumber Company, situated near Lake Charles, putting all of said road in an operating condition usual for roads of similar character.

5. The said second party shall, at its own cost and expense, deliver to said first party, at such point along the line of said railway as may be designated by said first party, the thirty and thirty-five pound steel now in the track of the narrow gauge portion of said line of railroad.

6. Immediately upon the conveyance by said first party to said second party of the property herein contracted to be sold, the said second party shall execute and deliver to said first party a contract giving said first party joint trackage rights over the entire line of railroad above mentioned, except that part thereof lying between said point on the Calcasieu River in Section 10 and said junction point in Section Thirty-two.

Said trackage agreement shall vest in said first party trackage rights over the said line of railroad from De Ridder to Lake Charles, with all the appurtenances thereto, for a period of Twenty Years from the date of this contract, for such trains as said first party may desire to operate over said road, provided that the number of trains operated by said first party over said line of railroad shall not materially interfere with the operation of trains by said second party.

The details of the operation of trains by said first party over said line of railroad shall be arranged by the Operating Departments of the said first and second parties, and shall be according to the usual and customary rules prevailing with railroads under similar circumstances; and for the use of said railroads as aforesaid, said first
361 party shall pay to said second party a rental equal to twenty-five cents per train mile for every train that shall be run over said road by said first party during the existence of this contract. Said rental shall be ascertained and fixed by reference to the records to be kept by said second party, and said second party shall keep complete and accurate record of trains that shall be run over said line of railroad during the existence of this contract, which record shall be open to the inspection of said first party.

Payments of rental shall be made monthly and on or before the Tenth day of each month.

The term "train," as used in this provision of this contract, shall at all times be considered and construed to mean an engine pulling one or more cars of any kind, except an engine pulling a wrecking outfit, and no charge shall be made for any engine running over said road when not pulling one or more cars.

The mileage for which said first party shall be required to pay, shall not include the movements of trains within the switching limits of any station, in placing cars or doing other similar work, nor shall it include the moving of logging trains over that part of

said line between De Ridder and the junction of the De Ridder Branch, which is about three-quarters of a mile in length, or the movements of logging trains over that portion of said line lying between Bonami and the junction of the Bonami branch. Map hereto attached and made part hereof will more fully define the limits referred to.

7. Said second party shall at all times during said period of Twenty years, at its own cost and expense, keep said line of railroad and its appurtenances in such operating condition as is usual with lines of railroad of similar character; and it shall, at its own cost and expense, put in and maintain in operating condition such as is usual with lines of railroad of similar character, such sidings as may be reasonably necessary, whenever a new mill may be built contiguous to said line of railroad.

8. The said first party shall have the right to connect said line of railroad over which it is to have trackage rights with any logging railroad or railroads that it may see proper to build at any time during the said twenty years from any point on said line to serve any near-by lumber mills.

9. In the event that any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand an arbitration and select one arbitrator; and the other party shall, within Ten days' notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and within ten days thereafter the two arbitrators thus selected shall, if they cannot agree upon the adjustment of the matter in controversy; select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto.

In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third arbitrator within ten days from the date of their selection, then the parties hereto
362 shall select new arbitrators who shall proceed as hereinabove provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators acting shall select another third arbitrator and so on.

10. This agreement with all things pertaining thereto is entered into on the faith of the consummation and performance of a certain agreement of October 31, 1906, between the Louisiana Western Railroad Company, the said Louisiana and Pacific Railway Company, the Hudson River Lumber Company, the King-Ryder Lumber Company, the Calcasieu Long Leaf Lumber Company, and the Long-Bell Lumber Company, for division of freights on joint business and for a routing of a proportion of the products of said lumber companies as provided in said agreement.

11. This agreement shall commence and become effective on the date hereof, and all the terms and conditions, rights and obligations hereof, shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

In witness whereof, each party hereto has caused this agreement

to be signed by its proper officer, and its corporate seal to be affixed and attested, the day and year first above written.

(Signed) LOUISIANA & PACIFIC RY. CO.,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

(Signed) LAKE CHARLES & NORTHERN R. R. CO.,
[SEAL.] By G. W. NOTT, *President.*

Attest:
G. G. MOORE, *Secretary.*

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

Joint Trackage Agreement between Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company.

This agreement, made and entered into this 21st day of February, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company), a corporation of the State of Louisiana, herein represented by C. B. Sweet, its Vice President, duly authorized by a resolution of its Board of Directors, adopted November 26, 1907, a certified copy of which is hereto annexed; and the Lake Charles & Northern Railroad Company (hereinafter called the Lake Charles Company), a corporation of the State of Louisiana, herein represented by G. W. Nott, its President, duly authorized by a resolution of the Board of Directors of the Lake Charles Company, adopted February 21, 1908, a certified copy of which is hereto annexed: Witnesseth:

363 Whereas, the Lake Charles Company owns a line of railway in the Parish of Calcasieu, extending from De Ridder, Louisiana, to a connection with the Louisiana Western Railroad Company at Lake Charles, Louisiana, a distance of approximately forty-five (45) miles, together with railroad yards, depots, switches, section-houses and appurtenances, said line of railway being hereinafter designated as "Joint Line," the same being now completed from De Ridder, Louisiana, to Fulton, Louisiana, a distance of approximately twenty-six (26) miles, and it is expected that the Lake Charles Company will complete at an early date that part of the "Joint Line" between Fulton, Louisiana, and a connection with the tracks of the Louisiana Western Railroad Company at Lake Charles, Louisiana—being the property acquired by the Lake Charles Company from the Louisiana Company by Act of Sale before Felix J. Puig, Notary Public, passed at New Orleans, Louisiana, on the 21st day of February, 1908; and,

Whereas, the Lake Charles Company has heretofore agreed to grant to the Louisiana Company joint trackage rights over the "Joint Line" as herein defined, and it is deemed advisable now to execute a contract for such trackage rights,

Now, therefore, it is mutually agreed between the parties hereto as follows, to-wit:

1. The Lake Charles Company grants and leases to the Louisiana Company during the continuance of the term hereinafter mentioned, and upon the terms and conditions and subject to the limitations hereinafter expressed, the right to use jointly with the Lake Charles Company the tracks of the "Joint Line" for the operation of the trains, engines and cars of the Louisiana Company, hereby conferring upon the Louisiana Company joint trackage rights over the "Joint Line" for a period of twenty years from October 31st, 1906, for such trains as the Louisiana Company may desire to operate over said "Joint Line," provided the operation of trains so operated by it shall not materially interfere with the operation of trains by the Lake Charles Company or under its authority.

2. The details of the operation of trains by the Louisiana Company over the "Joint Line" shall be arranged by the Operating Departments of the parties hereto, and shall be according to the usual and customary rules prevailing with railroads under similar circumstances (e. g. the supervision, management and operation of the "Joint Line" shall be under the exclusive direction and control of the Lake Charles Company, but all time cards, rules, regulations or orders for the movement of engines, trains and cars upon the "Joint Line" shall be reasonable, fair and just, and in accordance with the usual and customary rules prevailing with railroads under similar circumstances. All passenger trains shall be given preference over other trains, and the trains of both parties shall be given equal dispatch according to their class).

The Station and Administrative expenses of the "Joint Line" shall be apportioned between the parties hereto, as follows: Before
364 the completion of the operation of the "Joint Line" to Lake Charles, Twenty-five per cent (25%) to the Lake Charles Company, and seventy-five per cent (75%) to the Louisiana Company; after the completion and operation of the "Joint Line" to Lake Charles, Forty per cent (40%) to the Lake Charles Company, and Sixty per cent (60%) to the Louisiana Company.

Said station expenses cover and apply to the stations already established, which are to be maintained as long as they are necessary for the business of either party hereto, and such other stations as may hereafter be established on the "Joint Line."

Administrative expenses shall include the salary of the Superintendent and his office force and expenses, including dispatchers; and Station expense shall include the salaries of Station agents and other station expenses; but it is understood that for service rendered by the Lake Charles, Louisiana, agency, the Louisiana Company agrees to pay the lump sum of One Hundred Dollars ($100.00) per month in lieu of its proportion of station expenses above mentioned, and in addition thereto to furnish necessary stationery and supplies for the transaction of its own business at said station.

All joint employés shall be employed by the Lake Charles Company but any such employé shall be discharged at the request of

the General Manager or any other general officer of the Louisiana Company acting for it.

said joint employés shall perform the customary services incidental to their employment for both parties hereto and keep such accounts and make such reports as may be required of them.

3. The Lake Charles Company shall at all times during the term of this agreement, at its own cost and expense, keep the "Joint Line" in such operating condition as is usual with lines of railroad of similar character; and it shall at its own cost and expense, put in and maintain in operating condition, such as is usual with lines of railroad of similar character, such sidings as may be reasonably necessary whenever a new mill may be built contiguous to the "Joint Line."

4. The Louisiana Company shall have the right to connect the "Joint Line" with any logging railroad or railroads that it may see proper to build at any time during the term of this agreement from any point on the "Joint Line" to serve any nearby lumber mills.

5. The Louisiana Company hereby covenants and agrees that it will pay to the Lake Charles Company at its Treasurer's office in New Orleans, Louisiana, at the times and in the manner hereinafter provided during the term of this agreement, for the aforesaid use of the "Joint Line," a rental equal to twenty-five (25) cents per train mile for every train that shall be run over the "Joint Line" by the Louisiana Company during said term, which rental shall be ascertained and fixed by reference to the records to be kept by the Lake Charles Company, as well as the administrative and station expenses hereinabove provided for. The last named Company shall keep complete and accurate record of trains that shall be run over the "Joint Line" during the existence of this agreement, and such record shall be open to the inspection of the Louisiana Com-
365 pany. Payments of said rental and administrative and station expenses shall be made monthly on or before the tenth day of the following month for all mileage due account of trains run during the preceding month and for all administrative and station expenses of the preceding month.

The term train as used in this contract shall be considered and construed to mean an engine pulling one or more cars of any kind, except an engine pulling a wrecking outfit, and no charge shall be made for any engine running over the "Joint Line" when not pulling one or more cars.

The mileage for which the Louisiana Company shall be required to pay shall not include the movement of trains within the switching limits of any station, in placing cars or doing other similar work, nor shall it include the movement of logging trains over that part of the "Joint Line" between De Ridder and the junction of the De Ridder branch, which is about three quarters of a mile in length, nor the movement of logging trains over that portion of the said line between Bonami and the junction of the Bonami branch.

It is understood that cars handled solely on switching tracks at De Ridder, Fulton and Bonami to other line connections at these points on which the Lake Charles Company would otherwise receive

no trackage revenue, the Louisiana Company will pay the Lake Charles Company one train mile, or twenty-five (25) cents for each car so handled to such connections.

6. The Louisiana Company hereby assumes the risk of all loss, damage or injury which shall in any manner occur in or upon any tracks, building or premises, the use whereof is hereby granted, whether to property of the Louisiana Company or to property in its custody or to its passengers or to its employés, and which third persons or the property of third persons shall suffer by reason of the movement of any engine, car or train of the Louisiana Company, in all respects as if the Louisiana Company had then been in the exclusive use and control of such track, building or premises, excepting only such loss, damage or injury as shall be caused by the negligence of the employés solely of the Lake Charles Company; and excepting only, as aforesaid, the Louisiana Company hereby agrees to save the Lake Charles Company harmless from all such loss, damage and injury, from all liability and claim therefor, and from all consequent costs and expenses. Each party hereto hereby agrees to save the other party harmless from all loss, damage or injury caused by the negligence of its own sole employés, from all liability and claim therefor, and from all consequent costs and expenses.

The parties hereto expressly covenant and agree that in case of collision between their respective engines, cars or trains while on the "Joint Line," the party whose employé or employés are alone in fault shall be solely responsible for and shall settle and pay for the entire loss and damage caused thereby, and shall save the other party harmless therefrom; and that in case any such collision is caused by the fault of the employés of both parties or by the fault of
366 any joint employé or employés, or in case the cause of the collision is so concealed that it cannot be determined whose employés are at fault, each party shall bear and pay all the loss, damage or injury which its own property or property in its custody or its employés or passengers may have suffered in consequence thereof.

All liability for damages to persons or property accruing in connection with the maintenance or operation of the "Joint Line" from any cause except as herein otherwise provided shall be apportioned and paid by the parties hereto in the same proportion as has been hereinabove provided for the apportionment of administrative and station expenses.

7. In the event any controversy should at any time arise between the parties hereto and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and, within ten days thereafter, the two arbitrators then selected, shall, if they cannot agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the event that

the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from the date of their selection, then the parties hereto shall select new arbitrators who shall proceed as hereinabove provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

8. It is understood at the signing of this agreement that all of the tracks known as "Joint Line," and appurtenances, have been completed between and including the stations of De Ridder and Fulton, but that the "Joint Line" between Fulton and Lake Charles is under course of construction, but it is expected that the Lake Charles Company will complete at an early date that portion of the "Joint Line" between Fulton, Louisiana, and a connection with the tracks of the Louisiana Western Railroad Company at Lake Charles, Louisiana, at which time this contract of itself becomes effective over the entire "Joint Line."

9. Until the completion of the entire line referred to in Article 8, this contract is to apply as to payments of mileage, administrative and station expenses to the completed portion between Fulton and De Ridder. During the construction of the line between Fulton and Lake Charles, the Lake Charles Company agrees to keep the narrow gauge tracks which temporarily remain on the broad gauge ties in suitable operating condition, for which they are to receive compensation from the Louisiana Company at the regular train mile rates provided for in this agreement.

10. The payment of station and administrative expenses hereinbefore provided to be paid by the Louisiana Company shall cover only such period of time as said Louisiana Company shall have the right to operate trains over said "Joint Line" as a common carrier,
367 and if for any reason said Louisiana Company shall cease to have such right, such proportionate payments for "station and administrative expenses" by said Louisiana Company shall cease; provided, however, the right to operate logging trains shall not thereby terminate; and for the operation of such logging trains, the Louisiana Company shall pay the twenty-five (25) cents per train mile hereinbefore mentioned.

11. It is understood and agreed that all the terms and conditions of this contract shall bear upon and inure to the benefit of the successor or assigns of either or both of the parties hereto.

This done and signed, in duplicate, at New Orleans, Louisiana, on the 21st day of February, 1908.

LAKE CHARLES & NORTHERN RAILROAD COMPANY,

By —— ——, *President.*

Attest:

—— ——, *Secretary.*

LOUISIANA & PACIFIC RAILWAY COMPANY,

By —— ——, *Vice-President.*

Attest:

—— ——, *Secretary.*

Whereas, at a meeting of the Board of Directors of the Lake Charles & Northern Railroad Company, held at its office in the City of New Orleans on the 30th day of October, 1906, it was resolved that this Company enter into an agreement with the Louisiana & Pacific Railway Company to purchase that Company's line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River, Calcasieu Parish, State of Louisiana, both the completed and uncompleted portions thereof, as well as the right of way for a railroad from Lake Charles, Louisiana, together with right of way, road bed, tracks, yards, etc., and to enter at the same time into an agreement to give the Louisiana & Pacific Railway Company joint trackage rights over said railroad upon terms and conditions therein stated; and,

Whereas, the President and Secretary of this Company, being duly authorized by said resolution, did, on October 31, 1906, enter into an agreement with the Louisiana & Pacific Railway Company of the tenor and effect hereinabove recited; and,

Whereas, in accordance with the terms of said resolution and said agreement of October 31, 1906, it is proper and necessary for this Company to execute the contract for trackage rights therein contemplated.

Resolved, that the President and Secretary of this Company be and they are hereby authorized and directed to sign and execute an agreement for and in the name of this Company with the Louisiana & Pacific Railway Company, conferring joint trackage rights on the said railroad from De Ridder to Lake Charles, said officers being hereby vested with full discretion in the premises as to form of said contract and the proper steps to be taken to carry into effect the same.

368 *Certified Copy of Minutes of Meeting of Board of Directors of the Louisiana & Pacific Railway Company Authorizing Joint Trackage Agreement.*

At a special meeting of the Board of Directors of the Louisiana & Pacific Railway Company, a Louisiana corporation, held at the office of said Company at Bonami, Louisiana, on the 26th day of November, 1907, at the hour of 2:30 p. m., all of said Directors having consented that said meeting be held and being present and participating, the following, among other proceedings, were had, to-wit:

"Upon motion of B. H. Smith, the following resolution was introduced and adopted by unanimous vote:

"Whereas, at a meeting of the Board of Direcors of the Louisiana & Pacific Railway Company, held at its office in Bonami, Louisiana, on the 19th day of October, 1906, a resolution was unanimously adopted authorizing an agreement to be made with the Lake Charles & Northern Railroad Company and sell the Louisiana & Pacific Railway Company's line of railway from De Ridder, Louisiana, to a certain point on the Calcasieu River, Calcasieu Parish, State of Louisiana, both the completed and uncompleted portions thereof, as well as the right of way for a railroad from Lake

Charles, Louisiana, together with the right of way, roadbed, tracks, yards, etc., and to enter at the same time into an agreement to acquire joint trackage rights from said Lake Charles & Northern Railroad Company upon terms and conditions therein stated; and,

"Whereas, the President and Secretary of this Company, being duly authorized by said resolution, did on October 31, 1906, enter into an agreement with the Lake Charles & Northern Railroad Company of the tenor and effect hereinabove recited; and

"Whereas, in accordance with the terms of said resolution and said agreement of October 31, 1906, it is proper and necessary for this Company to execute the contract for trackage rights therein contemplated;

"Now, therefore, be it resolved, that the Vice President and Secretary of this Company be and they are hereby authorized and directed to sign and execute an agreement for and in the name of this Company with the Lake Charles & Northern Railroad Company acquiring joint trackage rights on said railroad from De Ridder to Lake Charles, said officers being hereby vested with full discretion in the premises as to the form of said contract and the proper steps to be taken to carry the same into effect."

STATE OF LOUISIANA,
Parish of Orleans:

I, B. H. Smith, Secretary of the Louisiana & Pacific Railway Company, a Louisiana corporation, do hereby certify that the above and foregoing is a full, true and correct copy of a resolution adopted at a meeting of the Directors of the Louisiana & Pacific Railway Company, a Louisiana corporation, held at the office
369 of said Company at Bonami, in the Parish of Calcasieu, State of Louisiana; that said meeting was duly, and regularly called in accordance with the provisions of the by-laws of said Company; that before said meeting was held the written consent of each and all the Directors of said Company for the holding of said meeting had been obtained; that all the Direcors of said Company were present and participated therein, and consented that said resolution be passed; that I am Secretary of the Louisiana & Pacific Railway Company at the time of the signing of this certificate.

In testimony whereof, witness my hand and the seal of said Company hereto affixed this 21st day of February, A. D. 1908.

——— ———, *Secretary.*

Agreement Between Louisiana & Pacific Railway Company and Hudson River Lumber Company.

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

This agreement, made and entered into this 2nd day of March, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company) a corporation of the

State of Louisiana, herein represented by R. A. Long, its President, and the Hudson River Lumber Company, (hereinafter called the Lumber Company), a corporation of the State of Missouri, herein represented by C. B. Sweet, its Vice-President, witnesseth:—

Whereas, the Louisiana Company owns or controls and operates a line of railway in the Parish of Calcasieu, extending from Lake Charles, Louisiana, to De Ridder, Louisiana, together with railroad yards, depots, switches, and all other appurtenances, together with connections at Lake Charles, with the Louisiana Western Railroad Company, the Kansas City Southern Railway Company, and the St. Louis, Watkins & Gulf Railway Company, at Fulton with the Colorado Southern, New Orleans & Pacific Railroad Company, at Bonami with the Kansas City Southern Railway Company, and at De Ridder with the Kansas City Southern Railway Company and the Gulf Colorado & Santa Fe Railroad Company, and

Whereas, the Louisiana Company owns a line of railroad connected with said main line from De Ridder to Lake Charles, as aforesaid, at De Ridder Junction, extending in a southeasterly direction a distance of twelve (12) miles, more or less, to Chitto and beyond, also approximately eleven (11) miles of logging spurs beyond Chitto; and,

Whereas, the Lumber Company owns and operates a saw mill at De Ridder, Louisiana, and owns a large amount of timber land with timber thereon along the line of railroad of said Louisiana Company, which it desires to transport to said mill at De Ridder and there convert the same into lumber, and,

Whereas, said lumber company has been much hampered because of lack of adequate railway facilities and accommodations for
370 transporting its logs to its said mill and for transporting the product of its said mill to desirable market, and

Whereas, it is very desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish,—

Now therefore, it is mutually agreed between the parties hereto, as follows, to-wit:—

1. The Louisiana Company shall for the period and upon the terms, limitations and conditions hereinafter expressed furnish to the Lumber Company all the necessary engines, cars and other appurtenances and equipment (hereinafter for brevity and convenience called equipment) for transporting the products of said Lumber Company from its Lumber camps to its mills at De Ridder, Louisiana.

2. The Louisiana Company shall place the said equipment upon the spur tracks at the Junction point of said spur tracks with main line of said Louisiana Company at the various Lumber camps along the main line of said Louisiana Company as directed by said Lumber Company.

3. The movement of said equipment and the placing thereof on said spurs shall be made in accordance with an agreement hereafter to be agreed upon between the Superintendent of said Louisiana Company and the Superintendent of said Lumber Company, in such

manner and upon such condition as shall be mutually agreeable to each.

4. The said Lumber Company shall take charge of said equipment and manage and control the same immediately upon its being placed upon said spurs, as hereinabove provided, and shall load the products of said lumber Company upon said equipment and return the same to the main line of said Louisiana Company, there to be taken in charge by the employees of said Louisiana Company, and transported to the mills of said Lumber Company.

5. The Lumber Company shall receive said cars from the Louisiana Company at the places aforesaid subject to the rules of the Master Car Builders' Association as far as they are applicable to the conditions and circumstances of said companies and the expense of any repairs caused or made necessary by said Lumber Company shall be borne by said Lumber Company.

6. The Louisiana Company shall furnish to said Lumber Company all steel rails, of suitable class, necessary to make any extension or extensions to any of the spurs of said Louisiana Company, said Lumber Company to furnish ties and bear all expense connected with the construction thereof.

7. In the event that it becomes necessary in order to make repairs upon any of said logging equipment, to take the same into De Ridder, said Lumber Company shall have the right to take said logging equipment, with its own crews, into De Ridder over the line of said Louisiana Company without any additional expense to said Lumber Company; the movement of such equipment to be made after first obtaining permission from the Superintendent of the Lou-
371 isiana Company, who is hereby required to furnish this permission when requested.

8. The Lumber Company hereby agrees that it will be responsible to the Louisiana Company and will hold it harmless and indemnify it against all loss and damage to persons or property caused by the operation of any of said equipment while being operated by or in possession of said Lumber Company.

9. During the term of this agreement the Lumber Company will ship, or cause to be shipped, over the line of railroad of the Louisiana Company to the terminus of said line or to the connection of said line of the Louisiana Company with other railroads, there to be delivered to connection with other carriers, one hundred (100%) per cent of the aggregate products of its mill or mills as are now located or may hereafter be located on the Line of said Louisiana Company, or any of its branches, to be carried by the Louisiana Company at the regular published tariff rates of said Company and filed with the Interstate Commerce Commission.

10. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and within ten days thereafter, the two arbitrators then selected, shall, if they cannot

agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from the date of their selection, then the parties hereto shall select new arbitrators, who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

11. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of and be obligations upon the successors and assigns of either or both of the parties hereto.

This done and signed, in duplicate, at De Ridder, Louisiana, the day and year first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By R. A. LONG, *Pres.*
HUDSON RIVER LUMBER COMPANY,
C. B. SWEET, *Vice-Pres.*

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Copy.

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

Agreement Between Louisiana & Pacific Railway Company and King-Ryder Lumber Company.

This agreement, made and entered into this 2nd day of March, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company), a corporation of the State of Louisiana, herein represented by R. A. Long, its President, and the King-Ryder Lumber Company (hereinafter called the Lumber Company), a corporation of the State of Missouri, herein represented by C. B. Sweet, its Vice-Pres., witnesseth:

Whereas, The Louisiana Company owns or controls and operates a line of railroad in the Parish of Calcasieu, extending from Lake Charles, Louisiana, to De Ridder, Louisiana, together with railroad yards, depots, switches, and all other appurtenances, together with connections at Lake Charles with the Louisiana Western Railroad Company, the Kansas City Southern Railway Company and the St. Louis, Watkins & Gulf Railway Company, at Fulton with the Colorado Southern, New Orleans & Pacific Railroad Company, at Bonami with the Kansas City Southern Railway Company, and at De Ridder with the Kansas City Southern Railway Company, and the Gulf, Colorado & Santa Fe Railroad Company; and

Whereas, the Louisiana Company owns a line of railroad connected with said main line from De Ridder to Lake Charles, as aforesaid, at Lilly Junction, extending in a Southeasterly direction a distance of 7.4 miles, more or less, to Walla,—also approximately fifteen (15) miles of logging spurs beyond Walla; and

Whereas, The Lumber Company owns and operates a saw mill at Bonami, Louisiana, and owns a large amount of timber land with timber thereon along the line of railroad of said Louisiana Company, which it desires to transport to said mill at Bonami, and there convert the same into lumber; and

Whereas, Said Lumber Company has been much hampered because of the lack of adequate railway facilities and accommodations for transporting its logs to its said mill and for transporting the products of its said mill to desirable markets; and

Whereas, It is very desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish,—

Now, therefore, It is mutually agreed between the parties hereto, as follows, to-wit:

1. The Louisiana Company shall for the period and upon the terms, limitations, and conditions hereinafter expressed furnish to the Lumber Company all the necessary engines, cars and other appurtenances and equipment (hereinafter for brevity and convenience called equipment) for transporting the products of
373 said Lumber Company from its lumber camps to its mill at Bonami, Louisiana.

2. The Louisiana Company shall place the said equipment upon the spur tracks at the junction point of said spur tracks with main line of said Louisiana Company at the various lumber camps along the main line of said Louisiana Company as directed by said Lumber Company.

3. The movement of said equipment and the placing thereof on said spurs shall be made in accordance with an agreement hereafter to be agreed upon between the Superintendent of said Louisiana Company and the Superintendent of said Lumber Company, in such manner and upon such condition as shall be mutually agreeable to each.

4. The said Lumber Company shall take charge of said equipment and manage and control the same immediately upon its being placed upon said spurs, as hereinabove provided, and shall load the products of said Lumber Company upon said equipment and return the same to the main line of said Louisiana Company, there to be taken in charge by the employees of said Louisiana Company, and transported to the mills of said Lumber Company.

5. The Lumber Company shall receive said cars from the Louisiana Company at the places aforesaid subject to the rules of the Master Car Builders' Association as far as they are applicable to the conditions and circumstances of said companies and the expense of any repairs caused or made necessary by said Lumber Company shall be borne by said Lumber Company.

6. The Louisiana Company shall furnish to said Lumber Company all steel rails, of suitable class, necessary to make any extension or extensions to any of the spurs of said Louisiana Company, said Lumber Company to furnish ties and bear all expense connected with the construction thereof.

7. In the event that it becomes necessary in order to make repairs, upon any of said logging equipment, to take the same into Bonami, said Lumber Company shall have the right to take said logging equipment, with its own crews, into Bonami over the line of said Louisiana Company without any additional expense to the said Lumber Company; the movement of such equipment to be made after first obtaining permission from the Superintendent of the Louisiana Company, who is hereby required to furnish this permission when requested.

8. The Lumber Company hereby agrees that it will be responsible to the Louisiana Company and will hold it harmless and indemnify it against all loss and damage to persons or property caused by the operation of any of said equipment while being operated by or in possession of the Lumber Company.

9. During the term of this agreement the Lumber Company will ship, or cause to be shipped, over the line of railroad of the Louisiana Company to the terminus of said line or to the connection of said line of the Louisiana Company with other railroads, there to be delivered to connection with other carriers, one hundred (100%) per cent of the aggregate products of its mill or mills as are
374 now located or may hereafter be located on the line of said Louisiana Company, or any of its branches, to be carried by said Louisiana Company at the regular published tariff rates of said Company and filed with the Interstate Commerce Commission.

10. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notifying the other party of that fact; and within ten days thereafter, the two arbitrators then selected, shall, if they can not agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from date of their selection, then the parties hereto shall select new arbitrators, who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

11. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of and be obligations upon the successors and assigns of either or both of the parties hereto.

This done and signed, in duplicate, at Bonami, Louisiana, the day and year first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By R. A. LONG, *Pres.*
KING-RYDER LUMBER COMPANY,
By C. B. SWEET, *V. P.*

[Endorsed:] Agreement between Louisiana & Pacific Railway Co. and King-Ryder Lumber Company.

United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

Agreement Between Louisiana & Pacific Railway Company and Longville Lumber Company.

This agreement, made and entered into this first day of July, A. D. 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company) a common carrier corporation of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Longville Lumber Co. (hereinafter called the Lumber Company) a corporation organized and existing under and by virtue of the laws of the State of Missouri, herein represented by R. A. Long, its President, witnesseth:

That, whereas, the Louisiana Company owns or controls and operates a line of railway in the Parish of Calcasieu, extending
375 from Lake Charles, Louisiana to De Ridder, Louisiana, together with the usual railroad yards, depots, switches, and all other appurtenances and connections for the unloading and transporting of freight and passengers; and,

Whereas, the Lumber Company owns and operates a saw-mill at Longville, Louisiana, where it manufactures large quantities of Lumber and similar products; and,

Whereas, the Lumber Company owns large tracts of timber in the neighborhood of Longville, Louisiana, which it is cutting and manufacturing into Lumber at its saw-mill in Longville, Louisiana; and,

Whereas, for the purpose of transporting its logs from the forest to its said saw-mill at Longville, Louisiana, it has been necessary for it to construct certain logging roads from its said mill out into the forest; and,

Whereas, said Lumber company has been much hampered because of the lack of adequate facilities and accommodations for transporting its said logs to its said mill, and for transporting the products of its said mill to desirable markets; and,

Whereas, it is desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish from its said mill;

Now, therefore, it is mutually agreed between the parties hereto, as follows:

1. That for and in consideration of the sum of Seventy Five Thousand Five Hundred Twenty-four and 20/100 Dollars ($75,524.20), paid by the said Louisiana Company to the said Lumber Company, (the receipt of which is hereby acknowledged) the said Lumber Company does hereby grant, bargain, sell and convey to the said Louisiana Company, its successors and assigns, all of its logging roads, tram roads, spurs and connections, together with all cars, engines, tools, equipment and appurtenances of every kind and character therewith connected.

2. The Louisiana Company shall for the period, and upon the terms, limitations and conditions hereinafter expressed, furnish to the Lumber Company all the necessary cars, engines, and other appurtenances and equipments, (hereinafter for brevity and convenience called "equipment") for transporting the products of said Lumber Company to its mill at Longville, Louisiana. The Louisiana Company shall place said equipment upon the spur tracks and logging roads at the points at which the Lumber Company shall from time to time be cutting timber to be transported on said cars to its mill at Longville, Louisiana; said Lumber Company shall receive said equipment at said points and shall perform all the work and render all the services necessary to the loading of said logs and products upon said cars free of expense and charge to the said Louisiana Company; that after said cars are loaded with logs and products of said forest then said Louisiana Company shall receive said cars and equipment so loaded as aforesaid, and shall transport the same to the mill of said Lumber Company at Longville, Louisiana.

3. The movement of said equipment and the placing
376 thereof on said spurs shall be made in accordance with an agreement hereinafter to be agreed upon between the Superintendent of *of* said Louisiana Company and the Superintendent of said Lumber Company, in such manner and upon such conditions as shall be mutually agreeable to each.

4. The Lumber Company shall receive said cars from the Louisiana Company at the places aforesaid subject to the rules of the Master Car Builders' Association as far as they are applicable to the conditions and circumstances of said companies, and the expense of any repairs caused or made necessary by said Lumber Company shall be borne by said Lumber Company.

5. The Louisiana Company shall furnish to said Lumber Company all steel rails, of suitable class, necessary to make any extension to any of the spurs herein purchased from said Lumber Company, and said Lumber Company is to furnish all ties, and bear all expense connected with the construction of said extensions.

6. In the event that it becomes necessary in order to make repairs upon any of said logging equipment, to take same into Longville, Louisiana, said Lumber Company shall have the right to take said logging equipment, with its own crews, into Longville, Louisiana, over the line of said Louisiana Company without any additional expense to the said Lumber Company, the movement of such equipment to be made after first obtaining permission from the Super-

intendent of the said Louisiana Company, who is hereby required to furnish this permission when requested.

7. The Lumber Company hereby agrees that it will be responsible to the Louisiana Company, and will hold it harmless and indemnify it against all loss and damage to persons or property caused by the operation of any of said equipment while being operated by or in possession of said Lumber Company.

8. During the term of this agreement the Lumber Company will ship or cause to be shipped, over the line of railroad of said Louisiana Company to the terminus of said Line or to the connection of said line of the Louisiana Company with other railroads, there to be delivered to connection with other carriers, one hundred per cent. (100%) of the aggregate products of its mill, or mills, as are now located or may hereafter be located on the line of said Louisiana Company, or any of its branches, to be carried by said Louisiana Company at the regular published tariff rates of said Louisiana Company, and filed with the Inter-State Commerce Commission.

9. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration and may select one arbitrator, and the other party shall, within ten (10) days after notice of the selection of such arbitrator by the other party itself select an arbitrator, notifying the other party of that fact; and within ten (10) days thereafter the two arbitrators then selected shall, if they can not agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of said three arbitrators shall be binding upon the parties hereto. In the
377 event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten (10) days from the date of their selection, then the parties hereto shall select new arbitrators who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two other arbitrators shall select another third arbitrator, and so on.

10. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of, and be obligations upon, the successors and assigns of either or both of the parties hereto.

This done and signed in duplicate at Bonami, Louisiana, the day and year first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By C. B. SWEET, *Vice-Pres.*
LONGVILLE LUMBER COMPANY,
By R. A. LONG, *President.*

United States Commerce Court. Filed March 22, 1913. G. F. Snyder, Clerk.

Agreement Between Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company.

This agreement, made and entered into this 2nd day of March, 1908, by and between the Louisiana & Pacific Railway Company (hereinafter called the Louisiana Company), a corporation of the State of Louisiana, herein represented by R. A. Long, its President, and the Calcasieu Long Leaf Lumber Company (hereinafter called the Lumber Company), a corporation of the State of Missouri, herein represented by C. B. Sweet, its Vice Pres. Witnesseth:

Whereas, the Louisiana Company owns or controls and operates a line of railway in the Parish of Calcasieu, extending from Lake Charles, Louisiana, to De Ridder, Louisiana, together with railroad yards, depots, switches, and all other appurtenances together with connections at Lake Charles with the Louisiana Western Railroad Company, the Kansas City Southern Railway Company and the St. Louis Watkins & Gulf Railway Company, at Fulton with the Colorado Southern, New Orleans & Pacific Railroad Company, at Bonami with the Kansas City Southern Railway Company and at De Ridder with the Kansas City Southern Railway Company and the Gulf, Colorado & Santa Fe Railroad Company; and

Whereas, the Louisiana Company owns a line of railroad connected with said main line from De Ridder to Lake Charles, as aforesaid, at Fayette, extending in a Northwesterly direction a distance of nine (9) miles, more or less, to Camp Curtis—also approximately nine (9) miles of logging spurs beyond Camp Curtis; and

Whereas, The Lumber Company owns and operates a saw mill at Lake Charles, Louisiana, and owns a large amount of timber
378 land with timber thereon along the line of railroad of said Louisiana Company, which it desires to transport to said mill at Lake Charles, and there convert the same into lumber; and

Whereas, Said Lumber Company has been much hampered because of the lack of adequate railway facilities and accommodation for transporting its logs to its said mill and for transporting the products of its said mill to desirable market; and

Whereas, It is very desirable that the Louisiana Company should acquire the tonnage which the said Lumber Company is in position to furnish—

Now, therefore, it is mutually agreed between the parties hereto, as follows to wit:

1. The Louisiana Company shall for the period and upon the terms, limitations, and conditions hereinafter expressed, furnish to the Lumber Company all of the necessary engines, cars and other appurtenances and equipment (hereinafter called, for brevity and convenience, equipment) for transporting the products of said Lumber Company from its lumber camps to its mills at Lake Charles, Louisiana.

. The Louisiana Company shall place the said equipment upon spur tracks at the junction point of said spur tracks with main of said Louisiana Company at the various lumber camps along main line of said Louisiana Company as directed by said Lumber npany.

. The movement of said equipment and the placing thereof on spurs shall be made in accordance with an agreement hereafter e agreed upon between the Superintendent of said Louisiana npany and Superintendent of said Lumber Company, in such nner and upon such conditions as shall be mutually agreeable ach.

. The Said Lumber Company shall take charge of said equip- t and manage and control the same immediately upon its being ed upon said spurs, as hereinabove provided, and shall load the ducts of said Lumber Company upon said equipment and re- the same to the main line of said Louisiana Company, there e taken in charge by the employees of said Louisiana Company, transported to the mills of said Lumber Company.

. The Lumber Company shall receive said cars from the Louis- a Company at the places aforesaid subject to the rules of the ter Car Builders Association as far as they are applicable to the ditions and circumstances of said companies and the expense of repairs caused or made necessary by said Lumber Company ll be borne by said Lumber Company.

. The Louisiana Company shall furnish to said Lumber Com- y all steel rails of suitable class, necessary to make any extension extensions to any of the spurs of said Louisiana Company, said mber Company to furnish ties and bear all expenses connected h the construction thereof.

. In the event that it becomes necessary in order to make repairs n any of said logging equipment, to take the same into Lake Charles said Lumber Company shall have the right to take said logging equipment, with its own crews into Lake Charles over the line of said Louisiana Company without any ad- onal expense to the said Lumber Company; the movement of h equipmenut to be made after first obtaining permission from Superintendent of the Louisiana Company, who is hereby re- red to furnish this permission when requested.

. The Lumber Company hereby agrees that it will be responsi- to the Louisiana Company and will hold it harmless and in- nify it against all loss and damage to persons or property caused the operation of any of said equipment while being operated by in possession of the lumber Company.

. During the term of this agreement the Lumber Company will p, or cause to be shipped, over the line of railroad of the Louisiana mpany to the terminus of said line or to the connection of said e of the Louisiana Company with other railroads, there to be ivered to connections with other carriers, one hundred (100%) cent. of the aggregate products of its mill or mills as are now ated or may hereafter be located on the line of said Louisiana mpany, or any of its branches to be carried by said Louisiana

Company at the regular published tariff rates of said Company and filed with the Interstate Commerce Commission.

10. In the event any controversy should at any time arise between the parties hereto, and they shall themselves be unable to adjust the same, either party may demand arbitration, and may select one arbitrator; and the other party, shall, within ten days after notice of the selection of such arbitrator by the other party, itself select an arbitrator, notify the other party of that fact; and within ten days thereafter, the two arbitrators then selected, shall if they cannot agree upon the adjustment of the matter in controversy, select a third arbitrator, and the decision of any two of the said three arbitrators, shall be binding upon the parties hereto. In the event that the parties hereto shall each select an arbitrator and such arbitrators shall fail to select a third within ten days from date of their selection, then the parties hereto shall select new arbitrators, who shall proceed as hereinbefore provided. In the event that any third arbitrator selected shall refuse to act, the two arbitrators selected shall select another third arbitrator, and so on.

11. It is understood and agreed that this contract shall be binding upon the parties hereto for a period of eighteen (18) years, and that all the terms and conditions of this agreement shall bear upon and inure to the benefit of and be obligations upon the successors and assigns of either of the parties hereto.

This done and signed, in duplicate, at Lake Charles, Louisiana, the day and years first above written.

LOUISIANA & PACIFIC RAILWAY COMPANY,
By R. A. LONG, *Pres.*
CALCASIEU LONG LEAF LUMBER COMPANY,
By C. B. SWEET, *V.-P.*

380 (Filed in Clerk's Office, Mar. 22, 1913.)

Agreement made this 13th day of October, A. D., 1906, by and between the Colorado Southern, New Orleans and Pacific Railroad Company, hereinafter called the "Colorado Company," party of the first part, the St. Louis and San Francisco Railroad Company, hereinafter called the "Frisco Company," party of the second part, the Louisiana and Pacific Railway Company, hereinafter called the "Louisiana Company," party of the third part, the King-Ryder Lumber Company, hereinafter called the "King Company," party of the fourth part, the Hudson River Lumber Company, hereinafter called the "Hudson Company," party of the fifth part, the Calcasieu Long Leaf Lumber Company, hereinafter called the "Cal-
381 casieu Company," party of the sixth part, and the Long-Bell Lumber Company, hereinafter called the "Long Bell Company," party of the seventh part; witnesseth:

That, whereas, the Colorado Company is a railroad corporation organized and existing under the laws of the State of Louisiana,

and is constructing a line of railroad in the State of Louisiana running in a general easterly and westerly direction and which will pass near the village of Ramsay in Calcasieu Parish, and which will reach directly and through its connections a large number of markets wherein the products of the King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company or all companies owned and controlled by either or all of said companies can be sold, and

Whereas, the Frisco Company is a railroad corporation organized and existing under the laws of the State of Missouri, and controls by ownership of stock the Colorado Company, and

Whereas, the Louisiana Company is a railroad corporation organized and existing under the laws of the State of Louisiana, and is to be constructed and operated from De Ridder to near Ramsay in Calcasieu Parish, Louisiana, and may be extended or construct branches to other points. Its line of railroad will connect with the line of railroad of the Colorado Company near Ramsay and will largely traverse the timber lands of the King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company and the companies owned or controlled by either or all of them and in connection with the railroad of the Colorado Company and of the Frisco Company will furnish railway facilities for the transportation of the lumber of all of said lumber companies from the forest to the different mills of all of said lumber companies on said line of railroad, and the transportation of the products thereof to the markets which all of said lumber companies will desire to reach, and

Whereas, the said King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company are each organized under the laws of the State of Missouri and each owns and controls large tracts of timber lands in the Parish of Calcasieu, State of Louisiana, all of which are tributary to the said proposed line of railroad of the Louisiana Company, and each is extensively engaged in cutting the timber on said land and marketing the products thereof, and

Whereas, the transaction of the business of all of said lumber companies is hampered and made less profitable than it should be because of lack of adequate railway facilities and means of transportation of the timber from the forest to their mills and for lack of railway facilities and means by which the products of said timber can be transported from the mills to the most advantageous markets. For the proper, economical and profitable conduct of their business the said lumber companies have arranged with the Louisiana Company to construct and operate its said proposed line of railway. 'In furtherance of this purpose the Louisiana Company, the King
382 Company, the Hudson Company, and the Calcasieu Company have requested the Colorado Company to permit the Louisiana Company to make a track connection with its line near Ramsay and to enter into this agreement, and

Whereas, the Long Bell Company is a corporation organized and existing under the laws of the State of Missouri, and it owns and controls the property and franchises of the said King Company,

Hudson Company, and Calcasieu Company through stock ownership thereof, and has also requested the Colorado Company to permit the Louisiana Company to make such track connections with its line and to enter into this agreement, and

Whereas, where the term "Lumber companies" is used in this agreement it means the King Company, Hudson Company, Calcasieu Company and the Long Bell Company and all lumber companies controlled by them by the ownership of stock or otherwise, and

Whereas, the several parties hereto, because of the mutual advantages accruing to them hereby, are willing to enter into this agreement.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, and of the sum of One Dollar ($1.00) to each of the parties hereto by the other parties paid, the parties hereto have covenanted and agreed and do covenant and agree with *the* other as follows:

First. The Louisiana Company covenants and agrees that it will, with all convenient speed and dispatch, construct its said railroad and provide it with the necessary side and spur tracks and appurtenances necessary to the railway ready for the operation of trains thereover from De Ridder, Louisiana, to near Ramsay, Louisiana, and to there connect said line with the line of railway of the Colorado Company, in the Parish of Calcasieu.

Second. The Colorado Company hereby covenants and grants to the Louisiana Company, during the existence of this agreement the right to connect the above described line of railway of the Louisiana Company with the line of railway of the Colorado Company at such convenient point near Ramsay as shall be designated by the Colorado Company, and also the right thereafter for a like term to operate at and over the point of connection under such rules and regulations therefor as shall from time to time be adopted by the Colorado Company.

Third. The Colorado Company and the Louisiana Company agree that during the existence of this agreement that they will interchange business with each other at said point of connection of their respective lines and by means thereof will establish a through line of railway with traffic thereover on the basis of the divisions of rates as hereinafter set forth.

Fourth. The King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company covenant and
383 agree with the Louisiana Company for its benefit and that of the Colorado Company and of the Frisco Company, to ship and cause to be shipped each and every month during the existence of this agreement over the line of railway of the Louisiana Company from the forest to the mills of the said named lumber companies and all companies owned or controlled by them or either of them all of the timber cut by all of said companies from all their lands (including all lands controlled directly or indirectly by them of by any of their subsidiary companies or by any companies in which they hold controlling interest) which they or either of them now own or may hereafter acquire along or contiguous to the said line of railroad of

the Louisiana Company and that they will ship at least fifty per centum (50%) of all the products of said mills to said point of connection near Ramsay over the line of railroad of the Louisiana Company, and then over the line of railway of the Colorado Company and of the Frisco Company and their connections to the points of destination thereof. And the Louisiana Company covenants and agrees with the Colorado Company and with the Frisco Company during the existence of this agreement to deliver to the Colorado Company and to the Frisco Company at said point of connection near Ramsay said amount of at least fifty per centum (50%) of all the products of said mills as hereinbefore mentioned, for the purpose of having same transported from the said point of connection over the lines of the railway of the said Colorado Company and the Frisco Company and their connections to the points of destination thereof; provided, however, that if hereafter the King Company, the Hudson Company, the Calcasieu Company or the Long Bell Company shall acquire timber lands along or contiguous to the line of railway of the Louisiana Company, the owners of which shall require, as a condition of the sale thereof, that all or part of the timber or products of the timber from the same shall be shipped over some other line or lines of railway than the line of railway of the Colorado Company, them, and in such case the provisions of this agreement shall not apply to such lands or to the timber or products of the timber therefrom in so far as there may be a necessary conflict with the said condition of sale of such after acquired lands.

Fifth. The Colorado Company and the Frisco Company agree during the existence of this agreement to accept from the Louisiana Company all shipments by it offered and to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Louisiana Company with cars as requested by it from time to time to a number sufficient for transporting at least fifty per centum (50%) of all the products of the mills of the King Company and Hudson Company, the Calcasieu Company and the Long Bell Company and of all companies owned or controlled by them or either of them. It is understood and agreed, however, that if the Colorado Company *of* the Frisco Company shall fail during any calendar month to furnish the number of cars required
384 by the Louisiana Company and necessary in order to transport fifty per centum (50%) of the products of the said mills during said month, then in such event the Colorado Company or the Frisco Company shall not be obliged thereafter to make up such deficit of cars in any such calendar month. Nor shall the Louisiana Company be obliged thereafter to furnish freight to make up such deficit on account of such failure of said Colorado Company or Frisco Company to furnish cars in said calendar month.

Sixth. The Colorado Company, the Frisco Company and the Louisiana Company agree each with the other that they will enter into joint tariffs relating to the joint traffic over their respective lines and to file the same with the Interstate Commerce Commission and to publish the same in the manner and form as required by law.

Seventh. It is further agreed that no per diem charges shall be made by either *of* the Colorado Company, or Frisco Company *of* the Louisiana Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six days after the expiration of said period of six days from the date of delivery thereof by one of said parties to the other, shall be paid by the party using and holding said cars to the other of said parties.

Eighth. The cost and expense of constructing, manufacturing and renewing such connecting, interchange or side tracks as may be necessary to properly handle the business of the Louisiana Company at said point of connection near Ramsay shall be borne and paid jointly and equally by the Louisiana Company and the Colorado Company.

Ninth. The King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company further covenant and agree with the Louisiana Company and the Colorado Company and the Frisco Company to deliver or cause to be delivered to the Louisiana Company for transportation over the railway of the Colorado Company and of the Frisco Company to points on or reached via the railways or some of them constituting the railway lines or system of which the Colorado Company or the Frisco Company shall form a part, at least fifty per centum (50%) of all outbound shipments *or* lumber and other prpoducts of the mills of the said King Company, Hudson Company, Calcasieu Company and Long Bell Company and of all companies owned or controlled by them or either of them, each and every month during the existence of this agreement, and in every such case they shall cause or permit such shipments to be so routed as to give to the railways constituting the railway lines or system of which the Colorado Company and the Frisco Company are a part, such hauls as shall yield to them the largest revenue.

It is agreed between the Louisiana Company, the Colorado Company and the Frisco Company that the Colorado Company and the Frisco Company shall have the exclusive right to fix and
385 determine all interstate rates applicable over the lines of the Louisiana Company and of the Colorado Company and of the Frisco Company and their connections governing all such shipments and all other shipments both outbound and inbound, whether *or* all of the said lumber companies or of the public generally.

Tenth. In respect to the division of freight rates between the Louisiana Company and the Colorado Company and the Frisco Company the said three companies hereby agree to the following division during the existence of this agreement.

On all lumber shipments originating on the line of the Louisiana Company, the Louisiana Company shall receive thirty-five per centum (35%) of the through rate, with a maximum of five and one-half *cents* per hundred pounds.

It is agreed that the above division of through rates shall include delivery of shipments to the Colorado Company or to the Frisco Company and are based upon the present through rates. It is

agreed that if at any time, during the existence of this agreement the through rates shall be reduced, the maximum of five and one half cents per hundred weight due to the Louisiana Company shall be reduced in proportion to the reduction of the through rates.

Where lumber shipments, made by the lumber companies, originate on the line of the Louisiana Company and are transported over the line of the Colorado Company from the point of connection between the lines of the two companies near Ramsay to near Kinder in Calcasieu Parish on the line of railway of the St. Louis, Watkins and Gulf Railway Company and delivered to the latter company at or near Kinder, the Colorado Company will make a rate for the transportation over its line, from the point of connection near Ramsay to the point of connection at or near Kinder, of not to exceed one cent per hundred pounds on such lumber shipment. But as to such shipments the division of the through rate hereinbefore agreed to and the maximum of five and one-half cents per hundred pounds shall not apply and as to such shipments the Louisiana Company shall not receive from the Colorado Company any division of the through rate and such shipments from Ramsay to Kinder shall not be computed or considered as part of the fifty per centum (50%) of shipments to be made over the line of railroad of the Colorado Company and the Frisco Company and their connections.

The Colorado Company and the Frisco Company agree that they will, at all times during the existence of this agreement publish for all territory east of the Mississippi River and north of the Ohio River and points on and west of the Mississippi River on the lines of the Frisco and Rock Island Systems and their connections the same freight rates from points on the Louisiana Company's line as are or shall be in effect from Eunice, La., on the Colorado Company's line.

On all commodities of traffic other than lumber which may be interchanged between the Louisiana Company and the Colo-
386 rado Company and the Frisco Company the said three companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair, and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana.

Eleventh. The Louisiana Company and the Colorado Company and the Frisco Company agree that each company shall be amenable to the other company for the prompt and proper handling of all cars of the other company, or cars of the other companies not parties hereto which it may handle; that in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, excepting as to per diem charges as hereinbefore provided for, and that no cars of either company shall be used locally by the other companies.

Twelfth. The Louisiana Company and the Colorado Company and the Frisco Company each further covenant and agree to indemnify and save harmless the other from any and all loss of and damage to its cars or equipment or to cars or equipment belonging to other

companies or persons which either company may received from the other company, which may occur while such cars or equipment are on the railroad of the indemnifying company and in case of any damage to said cars or equipment while on its said line each of the said companies agree to properly repair the same without delay, and if it fails or neglects to repair the same within a reasonable time and to the satisfaction of the other company, then the other company may make such repairs and the cost thereof with ten per centum (10%) thereon additional thereto shall be paid to the company making such repairs by the other company immediately upon the receipt of statement showing the amount of such cost:

Thirteenth. This agreement and all the terms and conditions, rights and obligations hereof shall inure in favor of and be binding upon the successors, assigns and lessees of each of the parties hereto.

Fourteenth. The Colorado Company shall proceed diligently to construct and put into operation its line of railroad passing near Ramsay and to make railroad connections with other line or lines of railroad so that the freight herein referred to may be transported by said Colorado Company and Frisco Company, and their connections, and as soon as the railroad of the Colorado Company has been constructed and put into operation to such extent and for such purposes then this agreement shall become effective and it shall be and remain in full force and effect for a period of fifteen (15) years hereafter, reckoning the said fifteen years from the date of the execution of this agreement; or as long as the lumber companies or either or them shall operate their mills in said Parish of Calcasieu.

In witness whereof, each party hereto has caused this
387 agreement to be signed by its proper officer and its corporate seal to be hereto affixed and attested the day and year first above written.

Executed in seven parts.

COLORADO SOUTHERN, NEW ORLEANS AND PACIFIC RAILROAD COMPANY.

[SEAL.] By C. C. CORDILL, *President*.

Attest:

WM. C. DUFOM, *Secretary*.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

[SEAL.] By A. J. DAVIDSON, *President*.

Attest:

F. H. HAMILTON, *Secretary*.

LOUISIANA AND PACIFIC RAILWAY COMPANY,

[SEAL.] By R. A. LONG, *President*.

Attest:

F. J. BANNISTER, *Secretary*.

KING-RYDER LUMBER COMPANY,

[SEAL.] By R. A. LONG, *President*.

Attest:
F. J. BANNISTER, *Secretary.*

HUDSON RIVER LUMBER COMPANY,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

CALCASIEU LONG LEAF LUMBER COMPANY,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

LONG BELL LUMBER COMPANY,
[SEAL.] By R. A. LONG, *President.*

Attest:
F. J. BANNISTER, *Secretary.*

388 United States Commerce Court. Filed Mar. 22, 1913. G. F. Snyder, Clerk.

(Coat-of-Arms.)

STATE OF LOUISIANA:

I, the undersigned Assistant Secretary of State, of the State of Louisiana, do hereby certify that the annexed and following nine (9) pages contain a true and correct transcript of certified copy of charter of "Louisiana and Pacific Railway Company", of Bonami, Louisiana, as is shown by comparing the same with the certified copy on file in this office and recorded in book "Records of Charters", No. 29, Folio 230, under date of August 6th, 1904; and, certified copy of amendment to Article III of the charter of "Louisiana and Pacific Railway Company", of Bonami, Louisiana, as is shown by comparing the same with the certified copy on file in this office and recorded in book, "Record of Charters", No. 47, Folio 424; under date of May 1st, 1907; and, certified copy of proceedings of stockholders' meeting of "Louisiana and Pacific Railway Company", increasing the amount of the capital stock from $30,000.00 to $200,000.00, as is shown by comparing the same with the certified copy on file in this office and recorded in book "Record of Charters" No. 64, Folio 146, under date of February 21st, 1910.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this 24th day of September A. D. 1910.

[Seal State of Louisiana, Secretary of State.]

EUGENE J. McGIONEY,
Assistant Secretary of State.

Charter of the Louisiana & Pacific Railway Company.

STATE OF LOUISIANA,
Parish of Calcasieu, ss:

Be it known, That on this 6th day of June, A. D. 1904, before me, Henry E. Hall, a notary public in and for the Parish of Calcasieu, State of Louisiana aforesaid, duly commissioned and qualified, and in the presence of the witnesses hereinafter named, and undersigned, personally came and appeared the several persons whose names are hereunto subscribed, who severally declared, that availing themselves of the laws of the State of Louisiana, in such cases made and provided, they have contracted and agreed and do, by these presents, covenant and agree and bind themselves, as well as such persons as may hereafter become associated with them, to form and constitute a corporation for the objects and purposes and under the articles and stipulations, to wit:

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Article I.

The name of the said corporation shall be the "Louisiana & Pacific Railway Company," and under its said corporate name it shall have power and authority to have and enjoy succession for the full term of twenty-five (25) years from and after the date hereof; to contract, sue and be sued; to make and use a corporate seal, to hold, receive, purchase and convey under their corporate name property, both real and personal; to name and appoint such managers, directors and officers, as their officers, and their interests and convenience may require; to make and establish such by-laws for the proper management and regulation of the affairs of the corporation as may be necessary and proper.

Article II.

The domicile of said corporation shall be at Bonami, in the Parish of Calcasieu, State of Louisiana; all citations or other legal process shall be served upon B. H. Smith, Manager of said corporation, or, in the event of his absence upon any agent of the said corporation.

Article III.

The object and purposes for which this corporation is established, and the nature of the business to be carried on by it, are declared and specified to be, to construct, maintain and operate, or to lease and operate a railroad commencing at Bonami, Calcasieu Parish, State of Louisiana, in an easterly direction, through Bonami Junction, in said Parish and State; to lease and operate railway and steamship lines as common carriers of freight.

Article 4.

The capital stock of said corporation is hereby fixed at the sum of Thirty Thousand Dollars ($30,000.00), divided into and repre-

sented by One Hundred (100) shares of the par value of Three Hundred Dollars (300.00) each. Said stock shall be paid for in installments of such amounts and at such times as the Board of Directors may determine, but any part or parcel of said stock may be issued by said Board of Directors at no less than par value, in payments of labor done or property actually received by the said corporation. Said stock books shall be kept by said corporation.

Article V.

All the corporate powers of said corporation shall be vested and exercised by a Board of Directors, to be composed of six stockholders, to be elected annually on the first Tuesday in April, in each year, all such elections shall take place by ballot at the general office of the company in Bonami, Calcasieu Parish, State of Louisiana, and each share of stock entitles the owner or holder thereof to one vote. The six stockholders receiving the highest number of votes cast shall be declared elected. The six (6) directors so chosen shall immediately thereafter proceed to choose from among their number a President, two Vice-Presidents, Secretary and Treasurer, who shall be vested with such power as given and defined by the by-laws of said corporation.

Article VI.

Whenever this corporation shall be dissolved either by limitation or any other cause, the affairs shall be liquidated by three stockholders to be appointed as Commissioners at a general meeting of the stockholders to be convened for such purpose, after thirty days' previous notice shall have been given by advertisement in one or more newspapers of general circulation and published in the Parish of Calcasieu, State of Louisiana, and a majority in amount of the capital stock of said corporation shall be required to elect, each share shall be entitled to one vote in person of by proxy. Said Commissioners shall remain in office until the affairs of the said corporation shall have been fully settled up and liquidated, and in case of death of one or more of said commissioners, the vacancy shall be filled by the election of surviving Commissioners.

Article VII.

This act of incorporation may be modified, changed or altered, or said corporation may be dissolved with the assent of two-thirds of the capital stock represented at any general meeting of the stockholders convened for such purpose, after thirty (30) days' previous notice shall have been given in one or more newspapers of general circulation and published in Parish of Calcasieu, State of Louisiana.

Article VIII.

No stockholder shall ever be held liable or responsible for the contracts or faults of said corporation in any further sum than the unpaid balance due on shares of stock owned by him, nor shall any mere informality in the organization have the effect of rendering

this charter null or of exposing a stockholder to any liability beyond the amount due on his stock.

Article IX.

R. A. Long, C. B. Sweet, B. H. Smith, W. F. Ryder, Robert Stack, and F. J. Bannister are hereby declared the Directors of this Company, to act until the first Tuesday in April, A. D. 1905, R. A. Long, as President, B. H. Smith, 1st Vice-President, Robert Stack and C. B. Sweet, 2nd Vice-Presidents, W. F. Ryder, Secretary, and Fred J. Bannister, Treasurer, have been chosen and selected as the first Board of Directors and Officers of said corporation to
391 serve as such until the 1st Tuesday in April, A. D. 1905, or until their successors shall have been elected.

Said corporation shall commence business as soon as all shares shall have been subscribed for.

This done and passed in my office in the town of Bonami, Parish of Calcasieu, State of Louisiana, in the presence of R. H. Mathis and O. C. Murray, competent witnesses of lawful age, both of Bonami, who hereunto sign their names with the said appearers and me, Notary Public, on the day and date aforesaid.

R. A. LONG.
C. B. SWEET.
B. H. SMITH.
W. F. RYDER.
ROBT. STACK.
F. J. BANNISTER.

Witnesses:

R. H. MATHIS.
O. C. MURRAY.

HENRY E. HALL,
Notary Public.

The stock of the above corporation is held by the following persons and in the amounts set opposite their names:

R. A. Long, Seventy-five (75) Shares.
C. B. Sweet, Five (5) Shares.
B. H. Smith, Five (5) Shares.
W. F. Ryder, Five (5) Shares.
Robert Stack, Five (5) Shares.
F. J. Bannister, Five (5) Shares.

Have examined the above and foregoing "act of incorporation," and finding nothing therein contrary to law, I hereby approve.

This done and signed officially at my office in the City of Lake Charles, Louisiana, on this 18th day of June, A. D. 1904.

JOSEPH MOORE,
Fifteenth (15) *Judicial District of the State of Louisiana.*

STATE OF LOUISIANA,
Parish of Calcasieu:

I hereby certify that the within is a true copy of the original on file in my office and recorded in book 13 of Mortgages on page 80 et seq.

In testimony whereof witness my official signature and seal on this 21st day of June, A. D. 1904.

(Signed) A. S. GOSSETT,
[SEAL.] *Deputy Clerk.*

392 *Amendment of Article III of the Charter of Louisiana & Pacific Railway Company.*

At a regular meeting of the Louisiana & Pacific Railway Company regularly called and duly held at the office of said Company at Bonami, Calcasieu Parish, Louisiana, on the 12th day of March, A. D. 1907, all of the Capital stock of said Company being represented at said meeting, on motion of C. B. Sweet, duly seconded, the following resolution was adopted:

"That Article III of the Charter of this Company be amended so as to read as follows: "The objects and purposes for which this corporation is established are to acquire right of way; to acquire, construct, maintain and operate a railroad, or railroads, and branches thereof, in the State of Louisiana as a common carrier of freight and passengers; to acquire by lease or otherwise, and to operate as common carriers of freight and passengers, steamship lines, and to carry and transport upon such railway and steamship lines, as may be operated by this corporation, express, United States Mail, and all other articles usually conveyed and transported by railroads and steamship lines; to construct and operate along its right of way telegraph and telephone lines for the transaction of its business; to buy, sell, lease, and otherwise acquire and deal with and in real estate and other property of every kind and character necessary and incident to the carrying out of the purposes of this corporation; to borrow money and issue evidences of indebtedness, and to convey, pledge and mortgage its property, real, personal and mixed, for the purpose of securing its indebtedness; and generally to do all things necessary and proper which may be incident to any of the purposes herein recited, and to have and exercise all the franchises, powers, rights, privileges and immunities conferred by law upon corporations created and organized for the purposes aforesaid."

The said resolution was unanimously adopted by the stockholders of said Company, all of said stock being voted in favor — said amendment.

There being no further business before the meeting, upon motion duly made and seconded, same was declared adjourned.

STATE OF MISSOURI,
County of Jackson:

I, F. J. Bannister, Secretary of the Louisiana and Pacific Railway Company, do hereby certify that the above and foregoing is a true and perfect copy of the Record Book of the Louisiana and Pacific Railway Company of the amendments made and adopted to Article III of Charter at said meeting of the stockholders, held on the 12th day of March, A. D. 1907.

[SEAL.] F. J. BANNISTER,
Secretary of Louisiana and Pacific Railway Company.

393 STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk of 15" Jud. Dist. Court.

I hereby certify that the above is a true and correct copy of a certain amendment of Charter of the Louisiana and Pacific Railway Co. filed for record in this office on the 25th day of April and recorded in Book 21 of Mortgages, page 448, on the 26" day of April, 1907.

In testimony whereof witness my official signature and seal at Lake Charles, La., this 26" day of April, 1907.

(Signed) M. E. CRAWFORD,
[SEAL.] *D'y Clerk.*

Certificate of Proceedings of Stockholders' Meeting of the Louisiana and Pacific Railway Company.

We, the undersigned, Chairman and Secretary of the stockholders' meeting of the Louisiana & Pacific Railway Company convened and held on the eighth day of February, 1910, do hereby certify that a meeting of the stockholders of the Louisiana & Pacific Railway Company was duly convened and held at the office of the Company in the town of De Ridder, Louisiana, on the eighth day of February, 1910; that a notice of said meeting was duly given and that all of the stockholders of said company signed and accepted service of said notice and consented to the meeting held for the purpose mentioned in said notice, and waived the issuance of any other notice and waived the publication of notice of said meeting, which said notice and waiver by stockholders holding all of the shares of stock in said company was duly filed with the Secretary of said meeting; that said meeting was organized by the election of C. B. Sweet as Chairman and Jennie L. Sweet as Secretary of said meeting; that the following resolution was submitted to said meeting, to-wit:

"Resolved, That the capital stock of this company be increased from $30,000.00 to $200,000.00."

That a vote was taken on said resolution and that upon the canvassing of votes it duly appeared that persons holding or representing not less than two-thirds of the capital stock of the corpora-

tion had voted in favor of the proposed increase of stock. That is to say, it duly appeared that all of the stockholders of said company had voted in favor of increasing said capital stock from $30,000.00 to $200,000.00.

We further certify that the amount of the capital stock of said corporation at the time said vote was taken was $30,000.00; the number of the holders of said stock was six; that the amount to which it was proposed and agreed to increase said capital stock was $200,000.00, and the number of shares to which it was proposed and agreed to be increased was 666⅔ shares; that the amount
394 of the shares of stock whose holders had voted in favor of said change was $30,000.00 and the number of shares whose holders had voted in favor of said change was 100 shares, and the amount and number of shares which voted against said change was none, and that the whole amount of debts and liabilities of said corporation is $579,120.03.

(Signed) C. B. SWEET,
Chairman of Stockholders' Meeting.

(Signed) JENNIE L. SWEET,
Secretary of Stockholders' Meeting.

STATE OF LOUISIANA,
Parish of Calcasieu, ss:

C. B. Sweet and Jennie L. Sweet being duly sworn upon their oaths do say that they were Chairman and Secretary respectively of the stockholders' meeting of the Louisiana & Pacific Railway Company mentioned and described in the above and foregoing certificate; and that the statements made and contained in the above and foregoing certificate are true.

(Signed) C. B. SWEET.
" JENNIE L. SWEET.

Subscribed in my presence and sworn to before me this 8th day of February, 1910.

(Signed) ALBERT I. SHAW.
[SEAL.] *Notary Public in and for Calcasieu Parish, Louisiana.*

395 (Filed in Clerk's Office, March 22, 1913.)

Interstate Commerce Commission, Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company; of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and Longville Lumber Company; of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and King-Ryder Lumber Company, and of contract dated March 1, 1911, between Louisiana & Pacific Railway Company and Hudson River

Lumber Company, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 10th day of April, 1913.

[Seal Interstate Commerce Commission, 1887.]

GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission

DAVIS EXHIBIT No. 8.

Contract File 3711, Auditor's Office.

Contract Between Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907. Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "Railway Company" a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Calcasieu Long Leaf Lumber Company, hereinafter called the "Lumber Company", a corporation organized under the laws of the State of Missouri, herein represented by S. T. Woodring, its General Manager, Witnesseth:

Whereas the railway company and the lumber company have heretofore entered into an agreement of date March 2, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transporting products of the lumber company from the lumber company's camps to its mills at Lake Charles, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps and

396 Whereas, although the railway company has furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet, at a hearing before the Interstate Commerce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Commerce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper;

Now, therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper, and in consideration of the sum of Fifteen Thousand Six Hundred Forty-five and 01/100 Dollars, ($15,645.01) to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 71, wheel rod	9,479.81	
Engine No. 51, wheel shay	3,500.00	
4 Acetylene Headlights	38.46	
		$13,018.27
3 Tank Cars	1,330.62	
3 Flat Cars	450.00	
Toggle Chain	846.12	
		2,626.74
		$15,645.01

The railway company also agrees to sell, transfer and deliver to the lumber company all steel rails and track equipment, beyond the station of Camp Curtis, at and for the price of Thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the second day of March, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph one of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Camp Curtis to Lake Charles, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber company to load and deliver said cars to the railway company at Camp Curtis.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

Paragraph sixth of said contract is annulled and cancelled.

In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolutions of the Board of Directors of said respective companies, this first day of March, 1911.

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Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

CALCASIEU LONG LEAF LUMBER COMPANY,

[L. S.] By S. T. WOODRING, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

DAVIS EXHIBIT No. 9.

Contract File 3710, Auditor's Office.

Contract Between Louisiana and Pacific Railway Company and Longville Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907. Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "railway company," a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Longville Lumber Company, hereinafter called the "lumber company", a corporation organized under the laws of the State of Missouri, herein represented by B. H. Smith, its General Manager, Witnesseth:

Whereas, the railway company and the lumber company have heretofore entered into an agreement of date July 1, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transporting products of the lumber company from the lumber company's camps to its mills at Longville, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps, and

Whereas, although the railway company had furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet at a hearing before the Interstate Com-
398 merce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Commerce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper;

Now therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper, and in consideration of the sum of Thirty-two Thousand Five Hundred Twnety-eight and 29/100 ($32,528.29) Dollars to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 95.....	9,192.81	
Engine No. 86.....	9,192.81	
Engine No. 97.....	8,544.90	
		26,930.52

1 Steel Car.....	559.20		
2 Tank Cars.....	1,686.02		
1 Cattle Car.....	250.00		
8 Skidder Cars.....	3,102.55		
		5,597.77	
			$32,528.29

The Railway Company also agrees to sell, transfer and deliver to the lumber company all steel rails and track equipment, beyond the station of Vandercook, at and for the price of thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the first day of July, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph two of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Vandercook to Longville, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber company to load and deliver said cars to the railway company at Vandercook.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

Paragraph fifth of said contract is annulled and cancelled.

In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its
399 General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolutions of the Board of Directors of said respective companies, this first day of March, 1911.

Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

LONGVILLE LUMBER COMPANY,

[L. S.] By B. H. SMITH, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

DAVIS EXHIBIT No. 10.

Contract File No. 3709, Auditor's Office.

Contract Between Louisiana & Pacific Railway Company and King-Ryder Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907.
Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "railway company", a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the King-Ryder Lumber Company, hereinafter called the "Lumber Company", a corporation organized under the laws of the State of Missouri, herein represented by W. L. Prickett, its General Manager, Witnesseth:

Whereas, the railway company and the lumber company have heretofore entered into an agreement of date March 2, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transporting products of the lumber company from the lumber company's camps to its mills at Bonami, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps, and

Whereas, although the railway company has furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet, at a hearing before the Interstate Commerce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Com-
400 merce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper.

Now therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper and in consideration of the sum of Twenty-six Thousand Eight Hundred Sixty-eight and 23/100 ($26,868.23) Dollars to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 45, 6 wheel rod.....	$7,500.00	
Engine No. 42, 6 wheel rod.....	4,500.00	
Engine No. 41, 6 wheel rod.....	3,000.00	
Engine No. 33, 4 wheel rod.....	1,200.00	
		$16,200.00

4 Tank Cars	2,387.78	
1 Steel Car	300.00	
1 Caboose	350.00	
1 Coach	250.00	
7 Skidder Cars	3,815.45	
1 Blacksmith Car	500.00	
4 Stable Cars	2,400.00	
2 Hand Cars	60.00	
1 Push Car	25.00	
2 Stock Cars	580.00	
		10,668.23
		$26,868.23

The railway company also agree to sell, transfer and deliver to the lumber company all steel rails and track equipment, beyond the station of Walla, at and for the price of Thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the second day of March, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph one of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Walla to Bonami, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber Company to load and deliver said cars to the railway company at Walla.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

401 Paragraph sixth of said contract is annulled and cancelled.

In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolutions of the Board of Directors of said respective companies, this first day of March, 1911.

Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

KING-RYDER LUMBER COMPANY,

[L. S.] By W. L. PRICKETT, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

DAVIS EXHIBIT No. 11.

Contract File No. 3708, Auditor's Office.

Contract Between Louisiana & Pacific Railway Company and Hudson River Lumber Company.

Interstate Commerce Commission. Received Apr. 11, 1911. 9907.
Bureau of Tariffs.

This agreement, Made and entered into this first day of March, 1911, by and between the Louisiana and Pacific Railway Company, hereinafter called the "Railway Company," a corporation organized under the laws of the State of Louisiana, herein represented by C. B. Sweet, its Vice-President, and the Hudson River Lumber Company, hereinafter called the "Lumber Company," a corporation organized under the laws of the State of Missouri, herein represented by C. H. Dodd, its General Manager, Witnesseth:

Whereas, the railway company and the lumber company have heretofore entered into an agreement of date March 2, 1908, whereby the railway company agreed to furnish to the lumber company the necessary engines, cars and other equipment for transportation — products of the lumber company from the lumber company's camps to its mills at De Ridder, Louisiana, and also agreed to furnish to the lumber company steel rails, necessary to make extensions or spurs from the end of the line of the railway company to the lumber company's camps, and

402 Whereas, although the railway company has furnished similar equipment and steel rails to all other lumber companies located near its line of railway, yet, at a hearing before the Interstate Commerce Commission at New Orleans, Louisiana, in December, 1910, and at St. Louis, Missouri, in January, 1911, the Interstate Commerce Commission appeared to look with some disapproval upon the furnishing of such equipment by a railway company to a shipper;

Now therefore, in order to avoid any appearance of doing anything which may be construed by the Interstate Commerce Commission as improper, and in consideration of the sum of Thirteen thousand one hundred eighty-one and 37/100 ($13,181.37) Dollars to the railway company paid by the lumber company, (the receipt of which is hereby acknowledged) the railway company hereby sells, assigns, transfers and delivers to the lumber company the following described property, and at the itemized prices, as follows, to-wit:

Engine No. 1, 8 wheel Shay.....	$5,000.00	
Engine No. 5, 4 wheel rod.....	3,000.00	
Engine No. 14, 4 wheel rod.....	2,000.00	
		$10,000.00

2 Hand Cars	120.00	
1 Tank Car	840.97	
4 Water Cars	1,450.00	
2 Cabooses	770.40	
		3,181.37
		$13,181.37

The Railway Company also agree to sell, transfer and deliver to the lumber company, all steel rails and track equipment, beyond the station of Bundick, at and for the price of Thirty Dollars per ton; the amount of steel rails and track equipment to be determined by the engineer of the railway company as soon as can be done.

The said contract of date the second day of March, 1908, between the railway company and the lumber company is hereby modified to the extent that this sale necessitates a modification thereof, particularly, paragraph one of said contract is abrogated, except that the railway company will furnish logging cars for the hauling of logs from Bundick to De Ridder, which said logging cars may go off of the line of the railway company and go to the spurs owned by the lumber company.

The lumber company to load and deliver said cars to the railway company at Bundick.

And in consideration for the use of said logging cars by the lumber company said lumber company shall keep such logging cars as are used by it upon its spur tracks in repair or pay the cost of such repairs.

Paragraph sixth of said contract is annualled and cancelled.

403-745 In testimony whereof the railway company has caused this instrument to be executed by its Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary and the lumber company has caused this instrument to be executed by its General Manager and its corporate seal to be hereunto affixed, attested by its Secretary, all pursuant to resolution of the Board of Directors of said respective companies, this first day of March, 1911.

Done in duplicate.

LOUISIANA & PACIFIC RAILWAY COMPANY,

[L. S.] By C. B. SWEET, *Vice-President.*

Attest:

F. J. BANNISTER, *Secretary.*

HUDSON RIVER LUMBER COMPANY,

[L. S.] By C. H. DODD, *General Manager.*

Attest:

F. J. BANNISTER, *Secretary.*

Note by the Clerk.

(Transcript of testimony and exhibits are omitted here in printing because printed elsewhere in separate volumes.)

746 *Order to Transfer Original Filing to Supreme Court.*

(Entered December 17, 1913.)

United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

In the above entitled cause, an order having been entered allowing an appeal to the Supreme Court of the United States from the final order or decree of the United States Commerce Court entered November 28, 1913, and the Clerk having been directed to transmit to the Supreme Court a properly authenticated transcript of the record, proceedings and papers on which said order or decree was made and entered,—

Now, pursuant to Section 2 of the Act of June 18, 1910, it is hereby ordered that the Clerk shall transmit to the Supreme Court from the files of the Commerce Court the original certified copies of exhibits filed in the proceedings before the Interstate Commerce Commission entitled "In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections," Investigation and Suspension Docket No. 11, or such parts of said certified copies as were not printed for the use of the Commerce Court.

By the COURT:

MARTIN A. KNAPP,
Presiding Judge.

747 In the United States Commerce Court.

No. 90.

LOUISIANA AND PACIFIC RAILROAD COMPANY, Petitioners,
v.
UNITED STATES OF AMERICA, Respondent, et al.

Objections to the Sufficiency of the Petition on Final Hearing.

(Filed June 2, 1913.)

Comes now the United States of America, by its counsel, on the final hearing hereof, and in accordance with the statute in such case made and provided, makes and enters the following objections to the sufficiency of the petition in the above-entitled cause, viz:

First. The Court is without jurisdiction to entertain the said petition, because the order of the Interstate Commerce Commission sought to be set aside is a negative order;

Second. The Court is without jurisdiction to review the action of the Interstate Commerce Commission in refusing to establish through routes and joint rates between the petitioner and the trunk lines;

Third. The Court is without jurisdiction or power to issue an order in the nature of a writ of mandamus or to order specific performance of the contracts;

Fourth. There is a misjoinder of parties petitioners and respondents;

Fifth. The petition does not state any cause of action against the respondent.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

June 2, 1913.

748 *Journal Entries.*

Case- Nos. 90, 91, 92 and 93.

No. 90.

LOUISIANA & PACAFIC RAILWAY CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. CO., LIMITED, et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Proceedings of June 3, 1913.

Said causes came on before the Court for final hearing upon the merits, and the arguments of counsel were commenced, Mr. Luther

M. Walter appearing on behalf of the petitioners and Mr. W. M. Barrow on behalf of the Railroad Commission of Louisiana.

Proceedings of June 4, 1913.

Said causes came on before the Court for further hearing upon the merits, and the arguments of counsel were continued, Mr Blackburn Esterline, Special Assistant to the Attorney General, appearing on behalf of the United States, Mr. James L. Coleman on behalf of the Atchison, Topeka & Santa Fe Railway Company, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

749–778 Proceedings of June 5, 1913.

Said causes came on before the court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. H. M. Garwood on behalf of the petitioners.

Proceedings of June 6, 1913.

Said causes came on before the court for final hearing upon the merits, and the arguments of counsel were concluded, Mr. H. M. Garwood appearing on behalf of the petitioners. Thereupon Mr. Garwood was given leave to file a memorandum of additional authorities, and Mr. Esterline was given leave to file a memorandum as to exhibits. Thereupon the causes were taken under advisement by the Court.

Note By the Clerk.

(Opinion by Mack, J., Nov. 26, 1913, is omitted here in printing because printed elsewhere in separate volume.)

779 *Final Decree.*

(Entered November 28, 1913.)

United States Commerce Court.

No. 90.

LOUISIANA & PACAFIC RAILWAY Co. et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

The above case having been submitted for final hearing upon pleadings and proofs, and due consideration thereof having been had, it is ordered and adjudged that the motion made by the Interstate Commerce Commission to strike from the record all oral evidence taken in this Court be and the same is hereby granted.

It is further ordered and adjudged that the motion to dismiss for want of jurisdiction be and the same is hereby denied.

It is further ordered and adjudged that that portion of the amended order of the Interstate Commerce Commission made October 30th, 1912, which is in the following language:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports:

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston East and West Texas Railway Company;
780 Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas

& Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be and they are hereby, notified and required to cease and desist and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service" be and the same is hereby vacated and set aside as to the petitioners herein.

By the Court.

November 28, 1913.

MARTIN A. KNAPP.
Presiding Judge.

781 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Affidavit.

(Filed November 29, 1913.)

Blackburn Esterline, being duly sworn, says that he is Special Assistant to the Attorney General of the United States, and has had charge of the interests of the United States in the above-entitled cause under the direction of the Attorney General.

That none of the following named companies, viz:
Louisiana Western Railroad Company,
Morgan's Louisiana & Texas Railway and Steamship Company,
New Orleans, Texas and Mexico Railroad, and the
St. Louis and San Francisco Railroad Company;

named as respondents to the petition has ever appeared, by counsel or otherwise, at any time at any of the hearings of the said cause, and has left the defense thereof entirely in the charge of the respondent, the United States.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 29th day of November A. D. 1913.

[SEAL.]

J. H. MACKEY,
Notary Public, D. C.

782 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
UNITED STATES OF AMERICA et al.

Summons and Severance.

(Filed November 29, 1913.)

To Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway and Steamship Company, New Orleans, Texas and Mexico Railroad, and the St. Louis and San Francisco Railroad Company:

You are hereby invited to join with the United States of America and the Interstate Commerce Commission in an appeal this day prosecuted from the final order or decree of the Commerce Court entered November 28, 1913, in the above-entitled cause, in which you are a party respondent, to the Supreme Court of the United States, to reverse the judgment rendered in the said cause. In the event of your failure to join, the United States of America and the Interstate Commerce Commission will prosecute said appeal without joining you as parties.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

783 Service of a true copy of the foregoing notice is hereby acknowledged this 29th day of November, A. D. 1913.

CHAS. H. BATES,
Agent at Washington for Louisiana Western R. R. Co.
CHAS. H. BATES,
Agent at Washington for Morgan's Louisiana & Tex. R. R. & S. S. Co.
WARREN N. AKERS,
Agent at Washington for New Orleans, Texas & Mexico R. R. Co.
WARREN N. AKERS,
Agent at Washington for St. Louis & San Francisco R. R. Co.

784 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATE OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, Morgan's Louisiana and Texas Railway and Steamship Company, New Orleans, Texas and Mexico Railroad, The St. Louis and San Francisco Railroad Company, Respondents, and Interstate Commerce Commission and Atchison, Topeka & Santa Fe Railway Company, Intervening Respondents.

Petition for Appeal.

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerce Commission, intervenor, feeling themselves aggrieved by the final decree entered in the above-entitled cause on November 28, 1913, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervenor, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to
785 the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge United States Commerce Court.

786 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its Solicitor, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

787 III.

In not dismissing the petition for the (*a*) same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies the Louisiana and Pacific Railway Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

788

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies; and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission, after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Louisiana and Pacific Railway Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Louisiana and Pacific Railway Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

X.

789 In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in

controlling the routing to compel the trunk lines to make allowances to the Louisiana and Pacific Railway Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may,
790 as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion of general observations, without regard to the peculiar facts of each particular case, after holding that the orders of the commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

791 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA AND PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER COMPANY, KING-RYDER LUMBER COMPANY, CALCASIEU LONG LEAF LUMBER COMPANY, LONGVILLE LUMBER COMPANY, AND THE LONG-BELL LUMBER COMPANY, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, Morgan's Louisiana and Texas Railway and Steamship Company, New Orleans, Texas and Mexico Railroad, The St. Louis and San Francisco Railroad Company, Respondents, and Interstate Commerce Commission, and Atchison, Topeka and Santa Fe Railway Company, Intervening Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respect conformed to law and the rules of court—

It is ordered and decreed that the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

792 *Copy.*

In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and the Long-Bell Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, the Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

Petition for Appeal.

(Filed November 29, 1913.)

The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, intervenors, feeling themselves aggrieved by the final decree entered in the above entitled cause on November 28, 1913, by their counsel pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court
793 of the United States.

Washington, November 29, 1913.

GARDINER LATHROP,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

Allowed:

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

794 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
v.
THE UNITED STATES OF AMERICA et al., Respondents.

Assignment of Errors.

(Filed November 29, 1913.)

Comes now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

III.

795 In not dismissing the petition for the reason that (*a*) the same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the Commission; (*b*) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the Commission; (*c*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (*d*) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.

IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies, the Louisiana and Pacific Railway Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

796

VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap lines and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

VIII.

In holding that the Commission after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

IX.

In not holding and adjudging that the organization of the Louisiana & Pacific Railway Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Louisiana & Pacific Railway Company and the trunk lines, in order to evade the provisions of the act to regulate commerce and, simultaneously, to maintain the advantages of the parties.

X.

In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of

bargain and sale, and with the power wielded in controlling the routing, are forcing the trunk lines to make allowances to the
797 Louisiana & Pacific Railway Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

XI.

In not holding and adjudging upon the facts found by the Commission that the transportation of the products of the proprietary companies by the petitioners is not transportation by a common carrier.

XII.

In not holding and adjudging that the conclusions and orders of the Commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the Commission are arbitrary, null, and void, as to the petitioners.

XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission, made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

XIV.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Com-
798 merce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

XV.

In disposing of the four separate and distinct cases in a single blanket opinion, without regard to the peculiar facts of each particular case, after holding that the orders of the Commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

GARDINER LATHROP,
EVANS BROWNE,
Attorneys for The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, Intervenors.

799 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA et al., Respondents.

Order Allowing Appeal.

(Entered November 29, 1913.)

In the above entitled cause, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and have in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be, and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the Clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,
Presiding Judge, Commerce Court.

800 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

v.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, the Atchison, Topeka & Santa Fe Railway Company, Gulf Colorado & Santa Fe Railway Company, and the Railroad Commission of Louisiana Intervenors.

Bond on Appeal.

(Filed December 5, 1913.)

Know all men by these presents, that we, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, as principals and the National Surety Company, a corporation of the State of New York, as surety are held and firmly bound unto the Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company in the sum of Five Hundred Dollars ($500.00), to be paid to the Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company. We bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals this fifth day of December, A. D.
801 nineteen hundred and thirteen.

Whereas, Heretofore, to wit, on the 28th day of November, 1913, in a suit pending in the United States Commerce Court, and numbered 90 on the docket of said Court wherein the Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company, Calcasieu Long Leaf Lumber Company, and the Long-Bell Lumber Company, were petitioners, and the United States of America, Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railway & Steamship Company, New Orleans, Texas & Mexico Railroad, and the St. Louis and San Francisco Railroad Company, were respondents, and the Interstate Commerce Commission, The Atchison, Topeka & Santa Fe Railway Company, the Gulf, Colorado & Santa Fe Railway Company, and the Railroad Commission of Louisiana, were intervenors, an order, judgment and decree was rendered against said respondents and intervenors, and

Whereas, Said The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, have appealed from said order and decree to the Supreme Court of the United States, and have obtained citation directed to the said Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States to be held at the City of Washington within thirty days from the allowance of the said appeal.

Now, the condition of the above obligation is such, that if the said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company shall prosecute their said appeal to effect and shall pay all costs, if they fail to
802 make their appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

THE ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY,
(Sgd.) By ALDIS B. BROWNE,
(") EVANS BROWNE,
Its Attorneys.
GULF, COLORADO & SANTA
FE RAILWAY COMPANY,
(Sgd.) By ALDIS B. BROWNE,
(") EVANS BROWNE,
Its Attorneys.
[SEAL.] NATIONAL SURETY COMPANY,
(Sgd.) By W. H. RONSAVILLE.

The above and foregoing bond approved and ordered filed this 5th day of December, A. D. nineteen hundred and thirteen.

(Sgd.) JOHN E. CARLAND, *Judge.*

803 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.,
v.
UNITED STATES et al.

Præcipe for Record.

To the Clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

Petition, with exhibits attached, filed January 6, 1913.

Return of service of petition on respondents, filed January 7, 1913.

Answer of the United States filed January 29, 1913.

Answer of the Interstate Commerce Commission, filed February 8, 1913.

Answer of Louisiana Western Railroad Company, filed February 6, 1913.

Demurrer of the M. L. & S. F. R. R. & S. Co., filed February 3, 1913.

Joint answer of N. O. T. & M. R. R. Co. and St. L. & S. F. R. R. Co., filed February 6, 1913.

Petition of intervention of Railroad Commission of Louisiana, filed February 10, 1913.

Order granting the same entered February 10, 1913.

Petition of intervention of A. T. & S. F. Ry Co. et al., filed February 10, 1913.

804 Order granting same entered February 10, 1913.

Journal entry on hearing to dismiss for want of jurisdiction, February 10, 1913.

Order denying motion to dismiss for want of jurisdiction, February 24, 1913.

Order designating Judge Carland to hear testimony entered March 5, 1913.

The following documents contained in the record and proceedings, viz:

1. Agreement, October 31, 1906, Louisiana Western Railroad Company, Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company, attached to the petition as exhibit A, filed March 2, 1913.

2. Agreement, October 13, 1906, Colorado Southern New Orleans & Pacific Railroad Company, St. Louis & San Francisco Railroad Company, Louisiana & Pacific Railway Company, King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company, marked exhibit B.

3. Agreement, October 31, 1906, Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company, filed March 22, 1913.

4. Agreement, February 21, 1908, Louisiana & Pacific Railway Company and Lake Charles & Northern Railroad Company, filed March 22, 1913, with the resolution, and certified copy of minutes, accompanying the same.

5. Agreement, March 2, 1908, Louisiana & Pacific Railway Company and Hudson River Lumber Company, filed March 22, 1913.

6. Agreement, March 2, 1908, Louisiana & Pacific Railway Company and King-Ryder Lumber Company, filed March 22, 1913.

7. Agreement, July 1, 1908, Louisiana & Pacific Railway Company and Longville Lumber Company, filed March 22, 1913.

8. Agreement, March 2, 1908, Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company, filed March 22, 1913.

9. Agreement, October 13, 1906, Colorado Southern, New Orleans

& Pacific Railroad Company, St. Louis & San Francisco Railroad Company, Louisiana & Pacific Railway Company, King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Long Leaf Lumber Company, and Long-Bell Lumber Company, filed March 22, 1913.

10. Certificate of Secretary of State showing increase of the capital stock of Louisiana & Pacific Railway Company, charter of Louisiana & Pacific Railway Company and certificate thereof, amendment to article 3 of said charter, and certificate of stockholders' meeting, all filed March 22, 1913.

805 Agreement March 1, 1911, Louisiana & Pacific Railway Company and Calcasieu Long Leaf Lumber Company; agreement March 1, 1911, between Louisiana & Pacific Railway Company and Longville Lumber Company; agreement March 11, 1911, Louisiana & Pacific Railway Company and King-Ryder Lumber Company; agreement March 1, 1911, Louisiana & Pacific Railway Company and Hudson River Lumber Company, with the certificate of the Secretary of the Interstate Commerce Commission, dated April 10, 1913.

Certified transcripts of testimony at hearings in proceedings before Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913.

Order of Interstate Commerce Commission, in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-*a*, filed May 10, 1913.

Certified copies of exhibits in proceedings before Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913.

Objections of the United States to the sufficiency of the petition on final hearing, filed June 2, 1913.

Journal entries as to final hearing.

Opinion of the Commerce Court.

Final decree of the Commerce Court.

Affidavit of Blackburn Esterline.

Summons and severance.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Petition for appeal of A. T. & S. F. Ry. Co. et al.

Assignment of errors, same.

Order allowing appeal.

Bond of A. T. & S. F. Ry. Co., G. C. & S. F. Ry. Co.

Citation on said appeal, same.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

GARDINER LATHROP,
Per E. B.,
EVANS BROWNE,
Solicitors for A., T. & S. F. Ry. Co. and G., C. and S. F. Ry. Co.

806 DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being first duly sworn, on his oath deposes and says, that on Monday, December 15, 1913, he mailed a certified copy of the foregoing præcipe for record to Wylie M. Barrow, Solicitor for Railroad Commission of Louisiana, Baton Rouge, Louisiana, and deposited the same, with a letter of transmittal, in the United States mail at Washington, D. C., and holds the acknowledgment of the said Wylie M. Barrow therefor.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this twenty-second day of December, A. D., nineteen hundred and thirteen.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, District of Columbia.

807 In the United States Commerce Court, June Session, 1913.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY et al.
v.
UNITED STATES et al.

Hugh P. Lutz, being duly sworn, deposes and says, that on December 17th, 1913, he served a certified copy of the præcipe for record, filed by the appellants in the above-entitled cause, upon Mr. Luther M. Walter, Solicitor for appellees, by delivering the same, in his absence, at his usual place of business, Room 557, The Rookery, Chicago, Illinois, to Mr. Edward J. Long, who received and accepted the same for him.

HUGH P. LUTZ.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal William A. Small, Notary Public, Cook County, Ill.]

WILLIAM A. SMALL,
Notary Public.

808 United States Commerce Court. Filed Nov. 29, 1913. G. F. Snyder, Clerk.

40.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Louisiana and Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Railroad Commission of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D., 1913.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

809 Filed Nov. 29, 1913. United States Commerce Court. G. F. Snyder, Clerk.

44.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Louisiana & Pacific Railway Company, Hudson River Lumber Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and the Long-Bell Lumber Company, and Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty

days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,
Presiding Judge, United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 2nd day of December A. D. 1913.

H. M. GARWOOD,
W. R. THURMOND,
LUTHER M. WALTER,
W. M. BARROW,
Solicitors for Appellees.

810 United States Commerce Court.

No. 90.

LOUISIANA & PACIFIC RAILWAY COMPANY, HUDSON RIVER LUMBER Company, King-Ryder Lumber Company, Calcasieu Long Leaf Lumber Company, Longville Lumber Company, and The Long-Bell Lumber Company, Petitioners,

vs.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD Company, Morgan's Louisiana & Texas Railway and Steamship Company, New Orleans, Texas & Mexico Railroad, and The St. Louis & San Francisco Railroad Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the foregoing transcript, together with the original certified copies of exhibits filed in the proceedings before the Interstate Commerce Commission entitled "In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections," Investigation and Suspension Docket No. 11, constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the Clerk's Office of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of December, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

811 In the Supreme Court of the United States, October Term, 1913.

No. 829.

UNITED STATES OF AMERICA et al., Appellants,
v.
LOUISIANA & PACIFIC RY. CO. et al.

Statement of Errors.

To the Clerk:

In pursuance of Paragraph 9, Rule 10, Rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,
Solicitor General.

DISTRICT OF COLUMBIA, *ss:*

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to each of the following named persons: Luther M. Walter, Esq., The Rookery, Chicago, Ill., and Hon. Wylie M. Barrow, Assistant Attorney General of Louisiana, Baton Rouge, La., Counsel for the Appellees, by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,
Notary Public, D. C.

I concur in the above designation.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission, Appellant.

812 In the Supreme Court of the United States, October Term, 1913.

No. 829.

UNITED STATES OF AMERICA et al., Appellants,
v.
LOUISIANA AND PACIFIC RAILWAY Co. et al.

Instructions to Omit Certain Matter From the Printing.

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz.—

1. The Report and Supplemental Report, and the Order and the Amended Order of the Interstate Commerce Commission.

2. Certified transcript of testimony at hearings in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913, consisting of 4 printed volumes marked, respectively, Volumes I, II, III, IV, and the certificates of Secretary McGinty, attached thereto.

3. Order of Interstate Commerce Commission, in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-A, filed May 10, 1913.

4. Certified typewritten copies of exhibits in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913, following short letter of H. M. Garwood, and the certificate of Secretary McGinty, attached thereto.

813 5. Opinion of the United States Commerce Court.

Other instructions are separately given to print in a single volume certain parts of the matter so to be omited.

JNO. W. DAVIS,
Solicitor General.

814 [Endorsed:] File No. 23,980. Supreme Court U. S., October term, 1913. Term No. 829. The United States et al., Appellant-, vs. Louisiana & Pacific Railway Company et al. Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

Endorsed on cover: File No. 23,980. U. S. Commerce Court. Term No. 829. The United States and Interstate Commerce Commission, Appellants, vs. Louisiana & Pacific Railway Company et al. File No. 23,981. Term No. 830. The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, Appellants, vs. Louisiana & Pacific Railway Company et al. Filed December 29th, 1913. File Nos. 23,980 and 23,981.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 831.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

FILED DECEMBER 29, 1915.

(23,982 and 23,983)

(23,982 and 23,983)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 831.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

No. 832.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND GULF, COLORADO AND SANTA FE RAILWAY COMPANY, APPELLANTS,

vs.

WOODWORTH AND LOUISIANA CENTRAL RAILWAY COMPANY ET AL.

APPEALS FROM THE UNITED STATES COMMERCE COURT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1914.

a United States Commerce Court.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited; The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company, Rock Island, Arkansas & Louisiana Railroad Company, Respondents; Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Railroad Commission of Louisiana, Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition and Exhibits.

(Filed January 8, 1913.)

1 In the United States Commerce Court.

WOODWORTH & LOUISIANA CENTRAL RAILWAY COMPANY, LIMITED; Rapides Lumber Company, Limited; The Long-Bell Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, CHICAGO, ROCK ISLAND & PACIFIC Railway Company, Rock Island, Arkansas & Louisiana Railroad Company, Respondents.

Petition.

To the Judges of the United States Commerce Court:

Your petitioners complain of the respondents, and for cause of action say:

1. That the petitioner, the Woodworth & Louisiana Central Railway Company, Limited, is a railway corporation duly chartered, incorporated and existing under the laws of the State of Louisiana, and by its charter duly empowered to construct, maintain and
2 operate or to lease and operate a railroad in the State of Louisiana as a common carrier of freight and passengers, and it now has and exercises franchises, powers, rights, privileges and

immunities conferred by law on corporations created and organized for railroad purposes.

That the Constitution and Laws of the State of Louisiana provide as follows:

Constitution, Art. 271. "Any railroad corporation or association organized for the purpose shall have the right to construct and operate a railroad between any points within this state and connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination." Const. 1879, Art. 243.

Constitution, Art. 272. "Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and railroad companies common carriers." Const. 1879, Art. 244.

Constitution, Art. 273. "Every railroad or other corporation, organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and where shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, the names of owners of stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfers of said stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers." Const. 1879 p. 245.

3 Revised Statutes, Sec. 1479. "Whenever the state or any political corporation of the same, created for the purpose of exercising any portion of the governmental powers in the same, or the board of administrators or directors of any charity hospital, or any board of school directors thereof, or any corporation constituted under the laws of this state for the construction of railroads, plank roads, turnpike roads or canals for navigation; or for the construction or operation of waterworks or sewerage to supply the public with water and sewerage, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner of land which may be wanted for its purchase, it shall be lawful for such state, corporation, board of administrators, directors or person to apply by petition to the District Court in which the same may be situated, or if it extends into two districts, to the judge of the District Court in which the owner resides, and if the owner does not reside in either district, to either of the District Courts, describing the land necessary for the purposes, with a plan of the same, and a statement of the improvement thereon, if any, and the name of the owner thereof, if known at present in the state, with a prayer that the land be adjudged to such state, corporation, board of administrators or directors upon payment to the owner of all such damages as he may sustain in consequence of the expropriation of said land for such public works; all claims for lands or damages to the owner caused by its taking or for expropriation for such public work shall be barred by two (2) years' pre-

scription, which shall commence to run from the date at which the land was actually occupied and used for the construction of the works." (As amended by Act 227, 1902, p. 457.)

Said petitioner operates a line of standard gauge railroad
4 from Woodworth, Louisiana, to Lamorie, Louisiana, a distance of about six miles; and operates a narrow gauge railroad from Woodworth, Louisiana, west to a station called Hineston, Louisiana, a distance of about eighteen miles.

The line of railroad of the petitioner, the Woodworth & Louisiana Central Railway Company, connects with the St. Louis, Iron Mountain & Southern Railway, at Woodworth, Louisiana, and with the Chicago, Rock Island & Pacific Railway Company, Morgan's Louisiana & Texas Railway & Steamship Company, and the Texas & Pacific Railway at Lamorie, Louisiana.

The petitioner Woodworth & Louisiana Central Railway Company complies with the rules and regulations promulgated by the State Railroad Commission of Louisiana and by the Interstate Commerce Commission, and complies with the laws of the State of Louisiana and of the United States relating to common carriers by railroad. It is engaged in both state and interstate commerce and is a common carrier by railroad for all persons desiring its services.

It carries a full line of class and commodity rates between points on its own lines in Louisiana and concurs in joint tariffs applying between points on its own road and points on connecting lines in Louisiana, and carries a full line of class and commodity rates from and to all interstate territory via all connecting lines.

That part of the road between Woodworth and Lamorie handles a diversified tonnage made up of general merchandise, agricultural and lumber products. There never have been any logging operations at all on this part of the road. The country through which it runs is an agricultural community.

5 2. The petitioner Rapides Lumber Company is a corporation organized under the laws of the State of Louisiana for the purpose of manufacturing and selling timber and lumber and of owning timber lands for the purpose of obtaining timber therefrom to manufacture into lumber.

It owns and operates a lumber mill, planing mill and plant for the manufacture of lumber at the town of Woodworth, Louisiana, on the line of the petitioner, the Woodworth & Louisiana Central Railway Company, and is a large shipper over said railroad.

3. The petitioner Long-Bell Lumber Company is a corporation organized under the laws of the State of Missouri for the purpose of engaging in the wholesale and retail lumber business. It acts as a selling agent for the product of the Rapides Lumber Company, and it is a party to one of the contracts hereinafter set out.

4. The respondent Chicago, Rock Island & Pacific Railway Company is a consolidated corporation organized under the laws of the States of Illinois and Iowa, and operates in connection with or over the lines of the railway and right-of-way of the respondent Rock Island, Arkansas & Louisiana Railway Company, a line of railways in the States of Louisiana, Texas, Arkansas, Missouri and other states.

5. The Rock Island, Arkansas & Louisiana Railway Company is a railway corporation, organized under the laws of the State of Arkansas, and on the 1st day of August, 1906, it owned and operated certain railway lines in and through the States of Arkansas
6 and Louisiana, and was then constructing a line of railroad into and through Lamorie, in Rapides Parish, Louisiana, which line of railway, when completed, would reach directly, and through its connections, a large number of markets wherein the products of the petitioners, Lumber Companies, could be sold.

6. That on or about the 28th day of January, 1908, the Interstate Commerce Commission entered upon a hearing and investigation in a certain cause entitled "Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al., Docket No. 1319." Hearings were had at various times and places, and on the 23d day of June, 1908, the Interstate Commerce Commission made a report and rendered an opinion, which report and opinion will be found in the 14 Interstate Commerce Commission Reports, at page 364 et seq., reference to which is hereby made. Further hearings were thereafter had in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, and on December 7, 1909, respondent the Interstate Commerce Commission made a supplemental report, which is published in the 17th Interstate Commerce Commission Reports, at page 338 et seq., reference to which supplemental report is hereby made, and the same is made a part hereof as fully as if set out herein.

7. By reason of the rendition of this report and opinion, and because the Interstate Commerce Commission demanded under threat of criminal prosecution that they comply with the require-
7 ments thereof, the trunk line railroad companies of the United States, or a large number of them, including the respondent Railroad Companies herein, about the month of August, 1910, filed with the Interstate Commerce Commission new tariffs or supplemental tariffs on lumber, to become effective in thirty days, which new tariffs or schedules canceled all joint tariffs which the said respondent Railway Companies had theretofore had and maintained with the petitioner Railway Company, and except for the order of the Interstate Commerce Commission, set out in paragraph 8 hereof, would have left said petitioner without any joint interstate rates or through routes on lumber with the other railroads of the country.

8. Thereupon the Interstate Commerce Commission made and entered of record an order, in words and figures as follows, to-wit:

At a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 3d Day of September, A. D. 1910.

Docket No. 3400, Sub. 7.

In the Matter of the INVESTIGATION AND SUSPENSION OF SUPPLEMENT No. 3 to I. C. C. No. 23, Filed by the Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railroad Company, Houston & Shreveport Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad Company.

It appearing from the records of the Interstate Commerce Commission that there has been filed with the Commission by the
8 Texas & New Orleans Railroad Company, the Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railroad Company, Houston & Shreveport Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad Company, schedule designated as Supplement No. 3 to I. C. C. No. 23, effective 10th day of September, 1910, which schedule states new individual or joint rates, fares or charges, applicable upon the articles named therein, that are in excess of the rates, fares and charges now in effect,

It is ordered that the Commission, upon complaint, without formal pleading and without answer by the interested carriers, do enter upon a hearing concerning the propriety of such advances and the lawfulness of the rates, fares, or charges stated in said schedule, with a view to making such order in the premises as may, after full hearing seem just and proper; and that such hearing be held at such time and place as may be hereafter fixed by the Commission.

The Commission being further of the opinion that, pending such hearing and decision of the Commission concerning the propriety of such rates, fares or charges, the operation of such schedule should be postponed for the reason that from a consideration of the character and amount of the advances and the circumstances under which they have been made, it appears to the Commission there is sufficient ground for claiming that said advances are unlawful and that the rates, fares or charges established by said schedule are unjust and unreasonable, and therefore unlawful, and that the public interest requires that the operation of said schedule be deferred until sufficient time has been given for an investigation by this Commission.

It is further ordered that the operation of the aforesaid schedule be suspended, and that the use of the rates, fares or charges therein specified be deferred until January 5, 1911.

9 It is further ordered that the several carriers above named that have filed schedules be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them; and

It is further ordered that the carriers named in said schedule and

supplements thereto as participating therein be and they are hereby made defendants to this proceeding, and that a copy of this order be forthwith served upon each of them.

A true copy.

EDW. A. MOSELEY, *Secretary.*"

Thereupon the Interstate Commerce Commission made similar orders on or about the same date, suspending the operation of the schedules of various other railroad companies within the United States, and thereby kept in force and effect the joint tariffs and the maintenance of through routes and joint rates between the petitioner Railway Company and the respondent railroad companies herein mentioned, and the various other trunk line railroads and systems of the United States for a period of 120 days. Reference to which orders is hereby made and the same are made a part hereof.

And the said Interstate Commerce Commission, from time to time, continued by appropriate orders, similar in form to the order hereinabove set out, the suspension of the cancellation of rates between various railroad companies of the United States, including the respondent railroad companies, and the petitioner Railway Company, until the end of the 30th day of April, 1912; the last of said orders being in words and figures as follows, to-wit:

10 "At a General Session of the Interstate Commerce Commission Held at its Office in Washington, D. C., on the 16th Day of January, A. D. 1912.

Charles A. Prouty,
Judson C. Clements,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
Commissioners.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap Line Connections.

It Appearing, That, by orders heretofore entered, the Commission instituted an investigation and hearing concerning the propriety of various tariffs filed by certain carriers wherein joint rates with and divisions or allowances to so-called tap line connections were to be canceled and withdrawn; and the Commission, by orders duly filed and served, having suspended and deferred the effectiveness of such tariffs until June 1, 1911; and that under authority of an order entered herein on May 18, 1911, the various carriers withdrew their said tariffs conceling such divisions or allowances and refiled them

to become effective on November 1, 1911; and that under authority of a further order entered herein on October 16, 1911, the various carriers withdrew their said tariffs canceling such divisions or allowances, and refiled them to become effective on February 1, 1912; and,

It Further Appearing, That a full investigation of the said matters has been had, but it has been impossible for the Commission to reach a final decision of the questions and matters involved within the period for which the operation of the said schedules has been
11 voluntarily postponed by the carriers; namely, on or before February 1, 1912; and,

It Further Appearing, That the various carriers by which the cancellations in question were published, republished and filed with the Commission are desirous of withdrawing the said cancellation tariffs and refiling them, thereby further postponing their effectiveness to May 1, 1912;

It Is Ordered, That each and all of the carriers that are parties to this record be, and they are hereby, authorized on three days' notice to the Commission and to the public, to cancel and withdraw all such tariffs filed with the Commission, and under their present terms to become effective on or before February 1, 1912, in which are contained cancellations or withdrawals of joint rates or divisions with or allowances to so-called tap line connections, and, Provided, the said tariffs are forthwith refiled to become effective on May 1, 1912;

It Is Further Ordered, That all tariffs or supplements issued under authority of this order shall bear the following notation on title page:

Issued by authority of the Interstate Commerce Commission's Order of January 16, 1912, in Investigation and Suspension Docket No. 11.

A true copy.

C. A. PROUTY, *Chairman.*"

9. Pursuant to the orders of date the 3d day of September, 1910, one of which is hereinabove fully set out, the Interstate Commerce Commission did enter upon a further hearing of the matter of the propriety of the advances and the lawfulness of the rates, fares or charges, stated in said schedules, mentioned in said orders, and thereupon, and on the 15th day of November, 1910, gave the petitioner Railway Company, and to various other railroad com-
12 panies in the United States, including respondent railroad companies herein, a notice in words and figures as follows, to-wit:

"NOVEMBER 15, 1910.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al.
vs.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of TAP LINE ALLOWANCES AND DIVISIONS, Being Docket Nos. 3400, Sub. 6; 3400, Sub. 7; 3493, 3511, 3512, 3513, 3514, 3524, 3548, 3551, 3552, and 3564, Consolidated under Investigation and Suspension Docket No. 11.

The above entitled proceedings are assigned for hearing on Thursday, December 9, 1910, 10 o'clock a. m., at United States Court rooms, New Orleans, Louisiana.

By THE COMMISSION,
EDW. A. MOSELEY, *Secretary.*"

Your petitioners aver that notwithstanding that by the Act to Regulate Commerce it is required that the Commission serve upon the defendants in any proceeding before it a copy of the petition with directions to answer the same or to satisfy the petition, nevertheless, no such service was made upon the defendants and no answers were made by said defendants to said petition before the said Interstate Commerce Commission.

Pursuant to said notice and the orders of the Interstate Commerce Commission hereinabove set forth, the petitioner Railway Company, together with the numerous other railroad companies; appeared before the Interstate Commerce Commission, at New Orleans,
13 on December 8, 1910, and subsequent days, and at St. Louis, Missouri, and at Chicago, Illinois, upon adjournments of said hearing, and thereupon the Honorable James S. Harlan, one of the Interstate Commerce Commissioners, examined the officers and agents of the petitioner Railway Company, concerning the matters under investigation in said proceeding, and said petitioner Railway Company also thereafter submitted to the Interstate Commerce Commission certain documentary evidence, by filing the same with the secretary of said Commission at Washington; and thereafter, and within the time fixed by the Commission, said petitioner filed with the Interstate Commerce Commission a statement of facts, abstract of the evidence which had been taken before said Commission, in reference to said petitioner, and a brief and argument, reference to which statement and brief is hereby made, and in said statement and brief said petitioner Railway Company petitioned the Interstate Commerce Commission to make an order compelling the trunk line railroad companies to restore the rates existing with the petitioner Woodworth & Louisiana Central Railway Company.

At the beginning of said hearing at New Orleans on December 8, 1910, the Honorable James S. Harlan, the commissioner presiding at said hearing, made the announcement to the parties interested and

appearing at said hearing, that each so-called "Tap-Line" would be treated as though it had filed a formal petition.

There was also filed before the Interstate Commerce Com-
14 mission in said case of Star Grain & Lumber Company et al. v. Atchison, Topeka & Santa Fe, "Investigation and Suspension Docket No. 11," a "Brief and Argument for Various Tap Lines," signed by H. M. Garwood, N. S. Brown and Luther M. Walter, which contained, among other things, the following:

"The facts, therefore, of each case are so widely divergent as to render classification impossible, and to necessitate, however burdensome it may become, the analysis of the facts of each case. It would be unjust to the several lines above, many of which are not represented by the writers of this brief, to undertake any arbitrary classification, and we therefore invoke as a part of that due process of law to which each is entitled, the examination by this body of the facts of each case and the entry of a special and separate order thereon, to the end that the rights of each line may be duly regarded."

And at the close of said brief was the following:

"We submit, therefore, with confidence that the basic questions underlying this investigation have been fully and carefully decided by the decisions of this Commission, by the practices in accordance therewith extending over a long period of years, by the decisions of our courts, state and federal, by the approval of the Federal Congress; and that investments made in full accord with the constitutions and laws of the several states, with the approval of Congress, and under the prior decisions of this Commission, ought not now to be confiscated in the absence of clear legislative requirement; and that railway corporations legally formed, sustaining all the burdens of state and federal legislation, and assuming, under charters legally issued, all of the common law and statutory obligations of a common carrier, cannot here be denied the right to engage in inter-
15 state commerce, establish through rates with connecting carriers and joint rates applicable thereto."

The said brief and the request therein for the entry of a special and separate order in each case was filed on behalf of the petitioner Railway Company among others.

10. On the 29th day of April, 1912, the Interstate Commerce Commission rendered an opinion, No. 1853, entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," which opinion will be found in the 23d Interstate Commerce Commission Reports, p. 277, et seq., reference to which opinion is hereby made, and which is made a part hereof, as fully as if set out herein in full.

And in said opinion and supplemental report is the following, to-wit:

"The cancellations by the trunk lines will be allowed to become effective on May 1, as provided in the tariffs now on file."

Your petitioners then believed and now believe that in and by said opinion and supplemental report and by the language hereinabove last quoted the Interstate Commerce Commission made an order authorizing, permitting and commanding the trunk line railroad companies of the United States, including the respondent rail-

road companies herein, to cancel all joint interstate rates on lumber with the petitioner Railway Company, on the 1st day of May, 1912.

16 And said trunk line companies of the United States, including the respondent railroad companies, have construed said opinion herein last above referred to, as an order from the Commission to cancel said joint rates and tariffs with the petitioner Railway Company, and now have canceled and have ceased to maintain any joint tariffs or through routes and joint rates with said petitioner on lumber. And the Interstate Commerce Commission, through its secretary, notified the trunk line railroads of the United States that said cancellations did take effect at midnight on the 30th day of April, 1912, and that rates, as filed, must be observed by carriers and shippers, if criminal violation of Interstate Commerce Act and Elkins Act is to be avoided.

Your petitioners further state that while "the matter of the investigation and suspension of schedules canceling through rates with certain tap line connections, Investigation and Suspension Docket No. 11," was pending before the Commission upon the application of the petitioner Railway Company, and on account of the course of procedure which had theretofore been taken by the Interstate Commerce Commission, your petitioners were led to believe, had the right to believe, and did believe that the Interstate Commerce Commission would further postpone the effectiveness of the tariffs referred to in the order of January 16, 1912, hereinbefore set out, until after the Interstate Commerce Commission had rendered its opinion and made its order in said cause.

Your petitioners further state that the Opinion No. 1853 and the order contained therein, hereinbefore referred to, and reported in the 23d Interstate Commerce Reports, at page 277, et seq., purports to have been decided, and is dated on April 23, 1912. But

17 your petitioners allege that said opinion was not made public until the 29th day of April, 1912, and if it was rendered on the 23d day of April, all knowledge and information thereof was withheld from your petitioners, and the public generally, and your petitioners had no opportunity to know the contents thereof until about 4 o'clock in the afternoon of April 29, 1912, and a copy of said opinion was not received by your petitioners until after the 30th day of April, 1912, by reason of which your petitioners were unable, on account of lack of time, to prepare any petition or application for injunction to this, or any other, Court, to prevent the cancellation of rates by the respondent railroad companies becoming effective as hereinabove stated, or, before the 1st day of May, 1912, to make any application to this Court to enjoin, set aside and annul the order of the Interstate Commerce Commission hereinbefore set out.

Your petitioners further state that on the 1st day of June, 1912, the Interstate Commerce Commission made a supplemental report entitled "Investigation and Suspension Docket No. 11, the Tap Line Case," Opinion No. 1898, which is reported in the 23d Interstate Commerce Reports, at page 549, reference to which is hereby made and which is made a part hereof as fully as if set out herein.

Said supplemental report or opinion, in so far as it relates to the so-called "Tap Line" case in general, and in so far as it makes a finding of the facts in reference to the petitioner Railway Company, is in words and figures as follows, to-wit:

18 Investigation and Suspension Docket No. 11. The Tap Line Case, Decided May 14, 1912.

Supplemental Report of the Commission.

By the COMMISSION:

In the original report herein (ante, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation, either in the movement of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as, in the judgment of the Commission, bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would enter such order with respect to all the tap lines before us as the conclusions announced might require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that fol-

19 low. In a number of cases, the tap line, without charge, hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such

a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line, such arrangements are possibly to be regarded as purely local, and, therefore, beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local, and, therefore, beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory, and have taken such action as, under all the circumstances developed,
20 seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless, the same or generally similar conditions exist in other extensive lumber producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature cannot be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory. * * *

"Woodworth & Louisiana Central Railway.

The Woodworth & Louisiana Central Railway serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain Railroad, which has a spur track to the mill. The tap line and lumber company are identical in interest, with the same principal officers. The tap line has a standard-gauge track extending from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. Its main track, however, is narrow gauge and runs from the mill westward for eighteen miles to a point from which unincorporated track extend- into the timber. The right-of-way for the narrow gauge track is leased from the lumber company; but the steel in the unincorporated logging spurs, on the other hand, is owned by the tap line and leased to the lumber company, as are four narrow gauge locomotives which the lumber company utilizes in the operation of the logging spurs. The equipment of the tap line consists of one standard gauge locomotive, five narrow gauge locomotives, and two standard and nine narrow gauge cars. The logs are hauled from the end of the incorporated track to the mill by the tap line without charge against the lumber com-
21 pany and are dumped into the mill pond by the trainmen. The standard gauge locomotive of the tap line switches the carloads of lumber from the planing mill to the point from which

they are taken by the Iron Mountain, a distance, as the record indicates, of only twenty-five feet, or less than a car length. About 95 per cent of the lumber moves through La Moria, being switched to that point, a distance of six miles, by the tap line. The explanation doubtless lies in the fact that the allowances from the Iron Mountain out of the through rates run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. There are no joint rates except on lumber. The record indicates that 40,707 tons of freight was handled for the lumber company during the fiscal year ending June 30, 1910, and that there was 2,100 tons of outside traffic, consisting of merchandise, farm products, and miscellaneous material. It does not appear what proportion of this tonnage was intended for employés of the lumber company. There is no passenger service.

The Woodworth & Louisiana Central was incorporated in 1900, with a capital stock of $25,000. It has no bonds, but is indebted to the lumber company in the sum of $88,000 and to a bank in the amount of $10,000. Its operations for the year ending June 30, 1910, resulted in a deficit; but there was a surplus on that date, resulting from previous years, amounting to nearly $10,000. It files annual reports with the Commission."

* * * * * * *

Irregular Practices of Tap Lines.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming to be common carriers, some of them did not file anual reports
22 with the Commission until recently. The reports of others are so far from being complete that they cannot be said to comply with the requirements of the Act. Many of them, also, do not publish any local rates to apply on traffic received from or delivered to their trunk line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service Law, the Safety Appliance Act and other Acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases, and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases, our examiners have been refused full access to the books of tap lines. With respect to all these matters, the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions, in no instance, have been based on the failure of a

tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

General Comments.

The rates of the trunk lines for the movements of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticised in Red River Cotton Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 437. So far as we can
23 see from a careful examination of the record, there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under Section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk line connections. In other cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or hereafter made effective to or from points on tap lines, the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and non-discriminatory rates on forest product when shipped from tap line points other than the mills of the controlling companies, and will also submit the bases of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission, an order will be entered authorizing trunk lines to make settlements on these bases with respect to all traffic moving after May 1, either under Section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in
24 this territory are parties defendant may be called to our attention in case they are in conflict herewith.

By THE COMMISSION,

[SEAL.] JOHN H. MARBLE, *Secretary.*"

Your petitioners further state that the Opinion No. 1898, reported in the 23d Interstate Commerce Commission Reports, at page 549, et seq., purports to have been decided and is dated on May 14, 1912,

but your petitioners allege that said opinion was not made public until the 1st day of June, 1912.

Petitioners further state that on the 11th day of June, 1912, the Interstate Commerce Commission made and entered of record, or at least made public on that day, an order in words and figures as follows, to-wit:

Order.

"At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 14th Day of May, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the INVESTIGATION AND SUSPENSION OF SCHEDULES Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It Further Appearing, That the Commission has found that in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natche, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;

Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
26 Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angeline & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Cado & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gidean & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their
27 respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;

Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission petitions asking for the establishment or re-establishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It Is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It Is Further Ordered, That the defendants the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies;

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;

El Dorado & Western Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
30 Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Albany Central Railroad Company;
Washington & Choctaw Railway Company;

Provided, The allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It Is Further Ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

And It Is Further Ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the

record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By THE COMMISSION,
[SEAL.] JOHN H. MARBLE, *Secretary.*"

11. Your petitioners, believing the reports and decisions and orders of the Interstate Commerce Commission hereinbefore set out under paragraph 10 hereof to be void and unlawful, filed in
31 this Court, on or about the 21st day of June, 1912, their petition asking this Court to suspend and annul said orders. Said suit is numbered 72 in this Court.

Thereupon, upon the motion of the United States and of the Interstate Commerce Commission, this Court, basing its decision upon the case of Proctor & Gamble v. The United States, on the 29th day of June, 1912, dismissed the petition of these petitioners for want of jurisdiction in this Court; and thereupon, to meet the decision of this Court, these petitioners and other railroad companies, affected by the report, decision and order of the Interstate Commerce Commission, filed an application before the Interstate Commerce Commission for a modification of the order hereinabove set out, which application is in form and substance as follows, to-wit:

Before the Interstate Commerce Commission.

I. & S. Docket No. 11.

Petition.

Comes now the undersigned, attorney for the various tap line railroads whose status was determined by the Commission in the above entitled investigation, and respectfully requests that the Commission will, at the earliest possible date, issue an affirmative order substantially in form as follows:

"It is ordered that Malvern & Freeo Valley Railway Company; Wilmar & Saline Valley Railroad Company; Arkansas & Gulf Railroad Company; Little Rock, Maumelle & Western Railroad Company; Beirne & Clear Lake Railroad Company; Mississippi, Arkansas & Western Railway Company; Bearden & Ouachita River
32 Railroad Company; Arkansas Eastern Railroad Company; Blytheville, Burdette & Mississippi River Railway Company; Brookings & Peach Orchard Railroad Company; Crossett Railway Company; Fordyce & Princeton Railroad Company; Homan & Southeastern Railway Company; Little Rock, Sheridan & Saline River Railway Company; L'Anguille River Railway Company; Ouachita Valley Railway Company; Griffin, Magnolia & Western Railway Company; Saline Bayou Railway Company; Enterprise Railway Company; Natches, Ball & Shreveport Railway Company; Black Bayou Railroad Company; The Bodcaw Valley Railway Company; Mill Creek & Little River Railway & Navigation Company; Red River & Rocky Mountain Railroad Company; Woodworth & Louisiana Central Railway Company; Freeo Valley Railroad Com-

pany; Natchez, Urania & Ruston Railway Company; Bernice & Northwestern Railway Company; Dorcheat Valley Railroad Company; Manghan & Northeastern Railway Company; Galveston, Beaumont & Northeastern Railway Company; Peach River & Gulf Railway Company; Riverside & Gulf Railway Company; Jefferson & Northeastern Railway Company; Beaumont & Saratoga Transportation Company; Angelina & Neches River Railroad Company; Missouri & Louisiana Railroad Company; Saginaw & Ouachita River Railroad Company; Warren, Johnsville & Saline River Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Caddo & Choctaw Railroad Company; Manila & Southwestern Railway Company; Louisiana & Pine Bluff Railway Company; Mansfield Railway & Transportation Company; Louisiana & Pacific Railway Company; Roosevelt & Western Railroad Company; Tioga & Southeastern Railway Company; Louisiana Central Railroad Company; Monroe & Southwestern Railway Company; Victoria, Fisher & Western Railroad Company; Ouachita & Northwestern Railroad Company; Lake Charles Railway & Navi-
33 gation Company; Louisiana Railway Company; Zwolle & Eastern Railway Company; Sabine & Northern Railroad Company; Gideon & North Island Railroad Company, and Poplar Bluff & Dan River Railway Company be and each of them are required, on or before September 15, 1912, to cease and desist, and for a period of two years thereafter to abstain from maintaining joint interstate rates for the movement of logs to the mills of the respective proprietary lumber companies in Opinions Nos. 1853 and 1898 (which opinions are made part hereof), and for the movement of the products of such logs and mills to interstate destinations.

It is further ordered that the defendants named, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great
34 Northern Railroad Company and Mobile & Ohio Railroad Company; Saline River Railway Company; Warren &

Ouachita Valley Railway Company; El Dorado & Wessen Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway; Fourche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company, The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpsin & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central Railroad Company, and Washington & Choctaw Railway Company be and they are hereby authorized and required on or before September 15, 1912, to reopen through routes and publish joint rates upon lumber destined to interstate points, provided the maximum of such joint rates shall not exceed those in effect April 30, 1912.

It is further ordered that the divisions or proportions of the joint rates accruing to the Saline River Railway Company; Warren & Ouachita Valley Railway Company; El Dorado & Wesson
35 Railway Company; Thornton & Alexandria Railway Company; Doniphan, Kensett & Searcy Railway Company; Forche River Valley & Indian Territory Railway Company; Prescott & Northwestern Railway Company; Memphis, Dallas & Gulf Railroad Company; Crittenden Railroad Company; De Queen & Eastern Railroad Company; Central Railway Company of Arkansas; Gulf & Sabine River Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; North Louisiana & Gulf Railroad Company; Arkansas Southeastern Railroad Company; Red River & Gulf Railroad Company; Tremont & Gulf Railway Company; The Nacogdoches & Southeastern Railroad Company; Texas Southeastern Railroad Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway Company; Trinity Valley & Northern Railway Company; Trinity Valley Southern Railroad Company; Caro Northern Railway Company; Butler County Railroad Company; Deering Southwestern Railway Company; Mississippi Valley Railway Company; Paragould & Memphis Railway Company; Salem, Winona & Southern Railroad Company; Fernwood & Gulf Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Alabama Central

Railroad Company, and Washington & Choctaw Railway Company upon the products of the mills of the proprietary companies named in Opinions Nos. 1853 and 1898, located on said lines, shall not exceed the divisions, proportions or allowances specified in said opinions."

The basis for the aforesaid request is contained in the following statement of facts and circumstances arising subsequent to the entry of the order of May 14, 1912:

(1) The order of May 14, 1912, entered in such proceeding is not such an order as is required by Sections 14 and 15 of the Act to Regulate Commerce as amended June 29, 1906.

36 (2) Subsequent to the entry of said order of May 14, 1912, the Supreme Court of the United States announced its opinion in the Proctor & Gamble case, in which it was held that the Commerce Court had no jurisdiction of suits brought to enjoin so-called negative orders of the Commission.

(3) There was much difference of opinion as to whether said order of May 14, 1912, was or was not an affirmative order within the definition of the Supreme Court in the said Proctor & Gamble case. Application was made to the Commission for modification of said order substantially in form with that set forth above, which said application was denied.

(4) Three test suits were filed in the Commerce Court to enjoin such order of May 14, 1912, and the Commerce Court, upon motion of the Commission and the Department of Justice, dismissed the same on the authority of the Proctor & Gamble decision.

(5) The time limit within which appeals from such decree of dismissal must be made will expire August 18, 1912.

(6) The trunk line railroads connecting with the so-called tap lines have accepted the Commission's requirement of May 14, 1912, as an affirmative order, and the said tap lines are without any recourse whereby to protect their lawful rights.

(7) The modification above requested will not change in any wise the present status of any of the tap line carriers so far as joint rates are concerned; the only effect of the order will be to confer jurisdiction upon the court to determine the lawful rights of the said tap lines and their shippers, and, so far as the law may require or permit, protect the tap lines and their shippers from unlawful acts of the trunk line connections.

(8) In the case of fifty-seven (57) lines in which the Commission held that the transportation of logs from the forest to the
37 mills and the product from the mills to the trunk lines was not a service of transportation when performed for the proprietary lumber companies, the trunk lines have refused to establish joint rates upon other forest products, notwithstanding the Commission's suggestion so to do, the position taken by the trunk lines being that if the tap lines are not common carriers of logs and lumber for the proprietary lumber companies such tap lines are not common carriers of any logs and lumber.

(9) Members of the Commission have stated since the entry of this order that the questions of law involved in the tap line cases are

important and should be determined at an early date. These questions can be determined at the present time by the entry of the form of order requested herein.

(10) Since May 14, 1912, the Commission has established joint rates upon lumber transported by short line railroad companies for proprietary lumber companies, and has entered an affirmative order requiring the publication of such joint rates. We are asking in the case of the Saline River Railway Company and other carriers recognized by this Commission as properly entitled to participate in joint rates that the same sort of an order be entered as was made by the Commission in the McCloud River Lumber case.

In the Peavey Elevator cases the Commission found that payment out of the joint rate to the Peavey Elevator Company for the elevation of the grain of that company was a rebate and discrimination; the finding in the tap line cases, so far as the transportation of lumber and logs for the proprietary lumber companies upon the fifty-seven (57) lines held not to be carriers of logs or lumber for the proprietary lumber companies, is that any allowance out of the joint rate is a rebate and discrimination. In that case an order to cease and desist was made. That order was similar in all respects
38 to the order requested in this case as to the fifty-seven first named tap lines.

We therefore respectfully petition this Honorable Commission to modify its order in form substantially as above requested.

L. M. WALTER,
Attorney for Petitioners.

And thereupon, on the 30th day of October, 1912, the Interstate Commerce Commission made and entered of record an amended order in form and substance as follows, to-wit:

Interstate Commerce Commission.

Investigation and Suspension Docket No. 11.

The Tap-line Case.

Amended Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 30th day of October, A. D. 1912.

Investigation and Suspension Docket No. 11.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap-Line Connections, and Certain Other Cases Consolidated Herewith.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised,

It is Ordered, That the said order be, and it is hereby, modified to read as follows:

1. It Appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

39

2. It Further Appearing, That the Commission upon the record finds in the case of the following named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;

40

Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;

Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
41 Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. It is Ordered, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company, The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkan-
42 sas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile & Ohio Railroad

Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service.

4. It Further Appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company.
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
43 Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. It is Ordered, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

6. It Further Appearing, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;

Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company,
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

44 have heretofore filed with the Commission their several petitions asking for the establishment or re-establishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. It is Ordered, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to re-establish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912;

8. Provided, That the rates on yellow pine lumber and articles taking the same rates from points on the lines of the last above named parties to the record shall not exceed the current rates in effect from the junction points; and

9. Provided further, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last named parties to the record on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. It Is Further Ordered, That in the case of the following parties to the record, by which petitions for the establishment or re-establishment of through routes and joint rates have not been filed, namely:

Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
45 De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;

Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby, authorized to re-establish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and Provided, further, that upon the failure of the principal defendants to re-establish the through routes and joint rates in effect on April 30, 1912, with the last above named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the re-establishment of such through routes and joint rates.

11. It is Further Ordered, That in case of the failure of the principal defendants to re-establish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

46 12. It Is Further Ordered, That the divisions of all joint rates herein required and authorized to be re-established on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. It Is Further Ordered, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. And It Is Further Ordered, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

12. Your petitioners further state that as a common carrier the Woodworth & Louisiana Central Railway Company became, and until midnight on the 30th day of April, 1912, was, a party to each and all of the following tariffs applicable on lumber and articles taking lumber rates to the various points in said tariffs mentioned, the lines publishing said tariffs and the lines mentioned and con-

curring therein constituting, with the petitioner, the Woodworth & Louisiana Central Railway Company, reasonable through
47 routes and said tariffs prescribing reasonable through rates between points on the Woodworth & Louisiana Central Railway and the several points therein mentioned, to-wit:

Southwestern Lines Lumber Tariffs Canceled May 1st, 1912, from Woodworth & Louisiana Central Railway Company Points.

S. W. L.	48-G	I. C. C.	892	to	Oklahoma points.
S. W. L.	50-E	I. C. C.	868	to	Ariz., Ark, Colo., Iowa, Ks., Mo., Neb., N. Mex., S. D., Utah, Wyo.
S. W. L.	63-E	I. C. C.	897	to	Texas points.
S. W. L.	4-A	I. C. C.	849	to	Mexico points.

Chicago, Rock Island & Pacific Railway Lumber Tariffs Canceled May 1st, 1912, from Woodworth & Louisiana Central Railway Company Points.

C., R. I. & P.	24000-E	I. C. C.	c 9235	to	Ala., Ark., Fla., Ills., Iowa, Ky., Minn., Miss., Mo., N. Mex., North Dak., South Dak., Tenn., Wisc., Wyoming, etc.
	28013	I. C. C.	c 9062		Tie Plant, Ark., or Winnfield, La., when creosoted and reshipped beyond.

Chicago & Eastern Illinois Railway Company, St. Louis & San Francisco Railway Company, and Chicago, Rock Island & Pacific Railway Company Lumber Tariffs Canceled May 1st, 1912, from Woodworth & Louisiana Central Railway Company Points.

2800-C	I. C. C.	2596	to	Ill., Ind., Ky., Mich., Mo., N. Y., Ohio, Pa., W. Va., Wisc., etc.

13. Your petitioner further say that prior to the year 1900 the petitioner Rapides Lumber Company was operating a lumber mill at Woodworth, Louisiana, and had a narrow gauge railroad running west into the timber belonging to said Company, and said Company had about 42,000 acres of timber. The only railroad which the Rapides Lumber Company then had for the shipping of its products was the St. Louis, Watkins & Gulf Railroad at Woodworth,
48 Louisiana, which road was unable to furnish the cars and equipment and to reach all markets for the lumber output of the mill of the Rapides Lumber Company. By reason of this fact, and because of having only the one railroad connection at Woodworth, some of the stockholders of the Rapides Lumber Company, about the 8th day of December, 1900, incorporated a railroad known as the Woodworth & Louisiana Central Railway Company, petitioner herein, and constructed a standard gauge railroad from Woodworth to Lamourie in order to connect with the Texas & Pacific Railroad and the Morgan's Louisiana & Texas Railway and Steamship Company. Later the Chicago, Rock Island & Pacific Railway Company built a road through the town of Lamourie, and the Rock Island Company also connected its road with the Woodworth & Louisiana

Central Railroad at Woodworth. The Woodworth & Louisiana Central Railroad Company purchased the narrow gauge road running from Woodworth west about the first of the year 1901 and ever since has owned and operated said road.

14. Petitioners further allege that in interstate commerce shipments there prevails now, and has prevailed for many years, in all of the lumber producing districts of the South with the full concurrence of the railroad systems and the producers and shippers of lumber, and with the full concurrence of the Interstate Commerce Commission, what are known as "blanket rates," that is, all lumber rates from all points on all lines in a given territory are the same to any point in any other given territory; that, consequently, the lumber rates for interstate commerce shippers from any point on the line of the petitioner, the Woodworth & Louisiana Cen-
49 tral Railway Company, were, until the 1st day of May, 1912, the same as from any of its points of connection with other railroads in the same blanket rate territory.

15. Petitioners further state that on or about the 1st day of August, 1906, a contract was entered into between the respondent Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company and the petitioners, the Woodworth & Louisiana Central Railway Company, Rapides Lumber Company and the Long-Bell Lumber Company, providing for a connection between the Woodworth & Louisiana Central Railway Company and Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company at the town of Lamourie, Louisiana, and further providing that during the existence of said agreement said railroad companies would interchange business with each other at said point of connection, and by means thereof would establish a through line of railway with traffic thereover on the basis of the divisions of rates as in said contract set forth. The said petitioners, lumber companies, agreed to ship over the line of the railway of the Woodworth & Louisiana Central Railway Company from the forest to the mills of said lumber companies all the lumber cut by said lumber companies, and that they would ship at least 50 per cent of the products of said mills to the point of connection at Lamourie, and that said lumber companies and said Woodworth & Louisiana Central Railway Company would ship 50 per cent of the products of said mills
50 over the line of the railway of the Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company to the points of destination. The Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island & Pacific Railway Company agreed to accept from the Woodworth & Louisiana Central Railway Company all shipments so offered, and to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Woodworth & Louisiana Central Railway Company with cars sufficient for transporting said 50 per cent of the products of the mills of said lumber companies. And the said respondents Rock Island, Arkansas & Louisiana Railway Company and the Chicago, Rock Island &

Pacific Railway Company further agreed with the Woodworth & Louisiana Central Railway Company that said railway companies would enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission, and to publish the same in the manner and form as required by law. Said agreement provided that it should become effective on the date thereof and continue for a period of fifteen years, or so long as the lumber company should operate its mills in said Parish of Rapides, Louisiana. A copy of said contract is hereto attached, hereby referred to, and made a part hereof, and marked Exhibit "A." The moving cause and consideration for these contracts was that the shippers had the right to route their freight over such line or lines of railroad as they saw fit, and in order to secure the performance of the contracts between the Woodworth &
51 Louisiana Central Railway Company and its connecting carriers, the respondent Railway Companies, it was necessary to have the shippers sign the contracts and agree to route their products over the line of the Woodworth & Louisiana Central.

16. That relying upon the contracts between the petitioners herein and the respondents Rock Island, Arkansas & Louisiana Railway Company, and Chicago, Rock Island & Pacific Railway Company, the petitioner, the Rapides Lumber Company, long prior to the Star Grain and Lumber Company decision, entered into a contract whereby said Lumber Company agrees to ship or cause to be shipped over the line of the Woodworth & Louisiana Central Railway Company all of the products of its mills located on the line of said Railway Company, such product to be carried by said Woodworth & Louisiana Central Railway Company by regular published tariff rates of said Company filed with the Interstate Commerce Commission, and the said Woodworth & Louisiana Central Railway Company has agreed to furnish said Lumber Company the necessary engines, cars and other appurtenances and equipment for transporting the products of said Lumber Company from the connections of the Lumber Company's tram roads with the line of railway of the Woodworth & Louisiana Central Railway Company and the Lumber Company's mills.

The investment which has been made by the Rapides Lumber Company in mills and timber amounts to more than a million and a half dollars. The capacity of the mills of the Rapides Lumber Company is 2,100 cars per annum. The value of the steel
52 rails laid in tram roads of the Rapides Lumber Company is $27,263.21. It has four locomotives used on the tram roads, of the value of $17,500.

17. Your petitioners state that the decision and report of the Interstate Commerce Commission, being the decision published in the 17th Interstate Commerce Commission Reports, page 338 et seq., is an erroneous and incorrect statement of the law, and is a misapprehension, misstatement and misapplication of facts in so far as petitioners herein are concerned, and the statement in said opinion to the effect

"that any allowance or division made to or with the tap line that

is owned or controlled directly or indirectly by the lumber mill or by its officers or board of directors, and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates"

is not a correct statement of the law, and is an erroneous and illegal holding upon the part of the Interstate Commerce Commission. And the whole of said opinion is an incorrect and improper statement of the facts and the law as applied to these petitioners, and the action of the trunk line railroad companies in August, 1910, in filing with the Interstate Commerce Commission the schedules stating new, individual or joint rates, fares or charges, applicable upon the articles named therein in excess of the rates, fares and charges theretofore in effect, and in thereby canceling the through routes and joint rates which had theretofore been maintained with the petitioner Railway Company was and is unlawful, and was
53 and is wrongful violation and avoidance of the obligations and contracts heretofore pleaded and set out, and is in violation of the Interstate Commerce laws of the United States.

That the opinion and report heretofore referred to and published in the 23d Interstate Commerce Commission Reports, at page 277 et seq., is an erroneous and incorrect finding of facts, is a misapprehension and misapplication of the facts as found, is an erroneous and illegal statement of the law, it takes away from these petitioners vested rights guaranteed by law, and impairs and destroys the obligation of legal contracts which these petitioners have. And the statement in said report found on page 338 thereof, to-wit:

"The cancellations by the trunk lines will be allowed and become effective on May 1st, as provided in the tariffs now on file,"

constitutes an order to the trunk line railroad companies to cancel the tariffs heretofore mentioned in paragraph 12 hereof, constitutes a denial and dismissal of the petition of the Railway Company to the Commission, heretofore pleaded in paragraph 9 hereof, to issue an order to said trunk line railroads to continue the through routes and joint rates theretofore existing with the petitioner Company, as provided for in the tariffs set out in paragraph 12 hereof.

That the Interstate Commerce Commission by its said opinions and reports herein referred to, and by its order allowing the cancellation by the trunk lines to become effective on May 1, as provided by the tariffs then on file, and by its supplemental report
54 dated May 14, 1912, and by its order dated May 14, 1912, and by its amended order of October 30, 1912, herein set out in full, has erroneously, illegally and improperly held that the petitioner Railway Company is not a common carrier in reference to logs and lumber and that the service it performs is not a common carrier service when said service is performed in the hauling of logs and lumber and the products of the petitioner Lumber Companies' mills, and has, by both of its said opinions, to-wit, the opinion dated April 23, 1912, and the opinion dated May 14, 1912, and by its order dated May 14, 1912, and its amended order dated October

30, 1912, ordered the respondent Railroad Companies to cease the maintenance of through routes and joint rates on lumber with the petitioner Railway Company, and to cease paying any division whatsoever of the rates to the petitioner Railway Company.

And by said opinions and reports and orders the Interstate Commerce Commission has ordered and required the respondent Railroad Companies to submit for the approval of the Interstate Commerce Commission the basis of their divisions on through joint class and commodity rates in effect or hereafter made effective to or from points on the line of the petitioner Railway Company, which said order is beyond the jurisdiction of the Interstate Commerce Commission, and commands the respondent Railroad Companies to violate the terms of the contracts with the petitioners, herein set out, and is in violation of Section 15 of the Interstate Commerce Act, which provides that the Commission may establish through routes and joint classifications and may "establish joint rates as the
55 maximum to be charged, and may prescribe the divisions of such rates, as hereinbefore provided, and the terms and conditons under which such through rates shall be operated whenever the carriers themselves shall have refused or neglected to establish voluntarily such through rates or joint classifications or joint rates." Your petitioners further allege that the respondent Railroad Companies and the petitioner Railway Company have not refused or neglected to establish voluntarily such through routes or joint classifications or joint rates, but on the contrary, as hereinbefore set out, have agreed to establish such through routes and joint classifications and joint rates, and have filed with the Interstate Commerce Commission their tariffs showing such through routes and joint classifications and joint rates, all of which will fully appear by Tariff Index Number 9-B, Interstate Commerce Commission Number 21.

Your petitioners further allege that the respondents Railroad Companies did not voluntarily cancel the through rates under and by virtue of the canceling tariffs hereinbefore referred to, but the action of the respondents Railroad Companies in that regard was had under the compulsion of the several reports, decisions and orders of the Interstate Commerce Commission hereinbefore referred to, and under the belief induced by said reports, decisions and orders, that if said joint through rates with the petitioner Railway Company were not canceled, that said respondents Railroad Companies, their officers and agents, would be subject to criminal prosecution at the instance of the Interstate Commerce Commission as for alleged rebates and alleged unlawful discrimination.

56 Your petitioners further allege that the respondents Railroad Companies, and other common carriers subject to the Act to regulate commerce, have for years recognized the petitioner Railway Company as a common carrier in every respect and fully entitled to all the rights and privileges belonging to a common carrier under the law; and, but for the action of the Interstate Commerce Commission, herein complained of, would continue to so recognize said petitioner as a common carrier and would partici-

pate with said petitioner in joint rates upon lumber and forest products and the maintenance of through routes to interstate destinations.

Your petitioners further state that the statement made in the finding of facts in reference to the petitioner Railway Company, to the effect that there is no charge made for the service of hauling the logs to the mills, is incorrect and misleading, the fact being that the charge for transporting the logs and finished product is provided for in the through rate which applies from the point at which the logs are delivered to the said Company by the Lumber Companies, and includes the transportation of the logs to the mill and the product from the mill to final destination, and is a practice which has long been recognized by the Interstate Commerce Commission, not only on lumber, but on other commodities, and is not in itself illegal.

The statement "the steel for these tracks is furnished and supplied by the Tap Line without charge," is incorrect and untrue. There is no steel or other equipment supplied by the Railway Company to the Lumber Companies. At the time of the hearing of the case it was the custom of the Railway Company to lease
57 or lend to shippers on its line steel and other equipment for the trams of said lumber companies beyond the line of the Railroad; this practice seemed to be condemned by the Commission, and by reason thereof, the Railway Company sold and transferred to the Lumber Companies all steel and other equipment which was being used by the Lumber Companies, and there is now no steel or other equipment furnished to the Lumber Companies by the Railway Company, and a copy of the contract or bill of sale evidencing this fact was filed with the Interstate Commerce Commission before the closing of the "Tap Line case" before said Commission.

Petitioners further state that upon the finding of facts made by the Interstate Commerce Commission, hereinabove set out, the petitioner Railway Company is a common carrier, performs a common carrier service, is entitled to the maintenance of through routes and joint rates and to divisions, as in its contracts provided.

Petitioners further state that the entire opinion, report, finding and order of the Interstate Commerce Commission, made under the caption, "Investigation and Suspension Docket No. 11, The Tap-Line Case," is inconsistent with itself, with the former decisions and reports of the Interstate Commerce Commission, permits and requires discriminations and inequalities, and a compliance with said decisions and requirements compels the railroad companies to violate Section 3 of the Interstate Commerce Act, hereinafter set out. And said decisions and orders are in violation of and in conflict with the "Commodities Clause" of Section 1 of said Interstate Commerce Act.

58 Your petitioners further allege that said decisions and orders hereinbefore set out were made by the said Interstate Commerce Commission as a result of investigation and alleged in-

formation furnished by its investigators without any opportunity to these petitioners of cross-examination or rebuttal.

Your petitioners allege that the Interstate Commerce Commission has no jurisdiction or authority in law to decide that the petitioner Railway Company is not a common carrier in respect to the logs and lumber which it transports for petitioners Lumber Companies (although holding that it is a common carrier and compelling it to be a common carrier with respect to other tonnage which it hauls), and by so holding and by its order to the trunk line railroad companies to cancel through routes and joint rates and to cease for two years paying divisions to the petitioner Railway Company, the Interstate Commerce Commission attempts to nullify state laws and the Interstate Commerce laws and its own rulings and decisions heretofore made; and the decision in reference to the petitioner Railway Company and the orders of the Interstate Commerce Commission, hereinabove set out, are each and all unlawful, erroneous and invalid.

Your petitioners further allege that said decisions and orders are arbitrary, unreasonable and in excess of the power and authority of the said Commission and constitute violations of Section 3 of the Act which forbids unjust discrimination between persons, localities and traffic. As an instance of the unequal, discriminatory, arbitrary and unreasonable Act of the Commission, petitioner alleges
59 that many of the so-called tap lines whose status was determined by the Commission in the decisions and orders hereinbefore set out, were recognized as common carriers of the traffic of the so-called proprietary interests and others denied such a status without any distinction in fact or manner of operation.

Further, petitioners allege that notwithstanding the Commission established a rule that under Section 15 payment should be made to the shipper when the transportation was not less than 1,000 feet nor more than three miles from the trunk line connection, nevertheless no such allowance was prescribed by the Commission in the case of your petitioners, but on the contrary such an allowance is expressly negatived by the Commission.

Your petitioners further allege that other short line railroads mentioned in the decisions and orders above set forth have been by the Commission directed to establish joint rates from points on their line to interstate destination points, when in fact all the circumstances and conditions which properly may be considered by the Commission in an investigation of this sort require that the petitioners be given joint rates over through routes to interstate destinations. In support of this allegation the petitioners call attention to the findings of the Commission and make said findings part of this petition as fully as if set forth herein, in the following cases:

Fourche River Valley & Indian Territory Railway Company.
The Nacogdoches & Southeastern Railroad Company.
Trinity Valley & Northern Railway Company.
Butler County Railroad Company.
Red River & Gulf Railroad Company, and others.

60 Your petitioners further state that the Interstate Commerce Commission in holding that the tracks and equipment of the petitioner Railway Company with respect to the industry *to* the petitioners Lumber Companies are plant facilities and that the service performed therewith for the said Lumber Companies in moving logs to their mills and performed therewith in moving the products of the said mills of the petitioners Lumber Companies to the junction of the petitioner Company with its connecting trunk line companies, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility—is without any basis in fact or in law. Said finding and conclusion is arbitrary, unreasonable and in violation of the Act to Regulate Commerce and the decisions of the Supreme Court of the United States.

Your petitioners assert that under the provisions of the Act to Regulate Commerce and the interpretation thereof by the Supreme Court of the United States upon the facts found by the Commission and set forth herein the said petitioner Railway Company is a common carrier by railroad of the logs of the petitioners Lumber Companies, in that it furnishes a railroad and maintains the same in condition for the movement of said logs and is a common carrier of the products of the petitioners Lumber Companies from their mills to the junction points with the Railway Company's connecting carriers, and inasmuch as the larger proportion of the output of said mills of the petitioners Lumber Companies is destined to interstate destinations, the said movement from said petitioners Lumber Companies' mills to said junction points is a service of

61 transportation by a common carrier railroad in interstate commerce.

Your petitioners further state that no part of that portion of the report headed "Irregular Practices of Tap Lines," found on pages 649-650 of the 23d Interstate Commerce Commission Reports, applies in any respect whatsoever to the petitioner Railway Company, but that on the contrary said petitioner Railway Company, "files annual reports with the Commission"; said reports "are complete and comply with the requirements of the Act"; it does "publish local rates to apply on traffic received from or delivered to its trunk line connections"; it does "charge for carrying passengers and less than carload shipments in all cases, and under authority of published tariffs"; it does not "permit the use by any lumber company of its tracks, without charging therefor," but on the contrary all of its charges and rates "are under tariff authority filed with the Interstate Commerce Commission"; it complies with the "Hours of Service law"; with the "Safety Appliance Act," and all the "other Acts imposing requirements on common carriers engaged in interstate commerce."

There is no "lack of attention on the part of said Railway Company to the rules and regulations respecting the filing of tariffs and keeping of accounts," but on the contrary, said Railway Company complies strictly with such rules and regulations and pays out thousands of dollars annually in so doing and in the publishing of tariffs,

and the books of the petitioner Railway Company have al-
62 ways been open and "full access thereto has been given to the examiners of the Interstate Commerce Commission."

Your petitioners allege that if any such failures to comply with the Act to Regulate Commerce existed on the line of the petitioner Railway Company, or if any such irregular practices do exist upon the line of the said petitioner, it is the duty of the said Interstate Commerce Commission to invoke the curative processes provided for in the Act, and petitioners further allege that such lapses or irregular practices, if any, do not constitute any basis for denial to said petitioner Railway Company and its shippers of the status which the law confers upon it.

18. Petitioners allege that the action of the respondents Railroad Companies, in filing with the Interstate Commerce Commission, in August, 1910, the schedule designated as Supplement No. 3 to Interstate Commerce Commission No. 23, effective the 10th day of September, 1910, and Supplement No. 9 to I. C. C. No. 2454-B, and schedule designated as Supplements Nos. 5 and 6 to Interstate Commerce Commission Nos. 6073 and 6194, and any and all other schedules filed by said respondents which state new, individual or joint rates, fares or charges that are in excess of the rates, fares and charges theretofore in effect, and which in effect cancel the through routes and joint rates with the petitioner Railway Company, is violative of the terms, obligations and conditions of said contracts between the respondents Railroad Companies and the petitioner Railway Company heretofore pleaded; and that the same is without cause, justification or
63 excuse; and that the action of said respondent Railway Companies in filing said schedules which state new, individual or joint rates, fares or charges that are in excess of the rates, fares and charges theretofore in effect, and which cancel through routes and joint rates with the petitioner Railway Company is in violation of that portion of Section 1 of the Act to Regulate Commerce, reading as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property * * * or in connection therewith shall be just and reasonable; and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful. * * * And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe and enforce just and reasonable classifications of property for transportation with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs." * * *

and is in violation of Section 3 of the Interstate Commerce Act, reading as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm,

corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act
64 shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

And the said action of said respondent Railroad Companies prevents these petitioners from having interstate traffic moved by said common carriers, the petitioner Railway Company and the respondent Railway Companies, at the same rates as are charged or upon terms or conditions as favorable as those given by said common carriers for like traffic under similar conditions to other shippers; and the action of the Interstate Commerce Commission first in declaring the law to be as said respondent declared the law to be by its opinion in the 17th Interstate Commerce Commission Reports, page 338 et seq., and later as it declared the law to be by its report contained in the 23d Interstate Commerce Commission Report, at page 277 et seq., and by the statement in said report permitting the cancellations by the trunk lines to become effective, is in violation of that portion of Section 15 of the Interstate Commerce law reading as follows, to-wit:

"The Commission may also, after hearing on a complaint or upon its own initiative without complaint, establish routes and joint classifications."

65 19. And the petitioners allege that the rights and equities of petitioners are so interwoven and complicated by their mutual undertakings under the contracts heretofore referred to and heretofore set out, that petitioners will be irreparably injured by the said respondents Railroad Companies' violation of said contracts, and petitioners will be without any adequate remedy at law.

That a multiplicity of suits will inevitably result, and circuitous action will be entailed upon the petitioners and each of them by the said respondents' avoidance and breach of said contracts.

That over 90 per cent of the lumber tonnage (more than 1,000 cars per month) handled by the petitioner Railway Company is destined to interstate points; that since the 1st day of May, 1912, the petitioner Railway Company has charged and is now charging on lumber destined to interstate points its local rate on all lumber shipments from all points to various points of connection with respondent Railway Companies.

The petitioners Lumbers Companies are being, and will continue

to be, placed at a serious disadvantage in regard to other lumber industries in the same territory not on the line of the petitioner Railway, because they are compelled to pay on all shipments of lumber destined to interstate points the local rate of the petitioner Railway to the junctions with respondent Railroad Companies, plus the blanket rate (which petitioners' competitors in said territory now enjoy) from said junctions to final destination of the lumber, the combination of the two rates placing petitioners Lumber Companies at a disadvantage as compared with petitioners Lumber Companies'
66 competitors in the same territory enjoying the blanket rate.

Petitioners Lumber Companies have no competitive rates on interstate lumber traffic, and the absence of through routes and joint rates greatly retards and impairs the business and investments of the petitioners Lumbers Companies, and the damages so caused to said petitioners cannot be adequately measured, and constitute irreparable loss.

Your petitioners further allege that in the case of Central Yellow Pine Association v. Vicksburg, Shreveport & Pacific Railroad Company, 10 Interstate Commerce Commission Reports, page 193, the Interstate Commerce Commission held that divisions such as those condemned in the opinions in "The Tap Line Case" were proper, and that, acting under the decision in the said Central Yellow Pine Association case, and other decisions of the Interstate Commerce Commission, and acting under the law of the State of Louisiana, the investments by the petitioners herein mentioned were made; that under the Constitution and Laws of the State of Louisiana the petitioner Railway Company is compelled to operate as a common carrier and its status as a common carrier is fixed by State and Federal laws, and the Interstate Commerce Commission is wholly without right or authority of law to deny to the petitioner Railway Company the right to operate as a common carrier of all traffic transported.

In the case of Freeo Valley Railroad Company v. Hodges, Secretary of State, 151 Southwestern Reporter, page 281, the Supreme Court of Arkansas, on November 18, 1912, held that the Freeo Valley Railroad Company (one of the parties to the proceeding
67 in the "Tap Line case") could not surrender its charter and cease to perform its duties to the state and the public, as a common carrier, and this is doubtless the law and will doubtless be so held by the Supreme Court of Louisiana and all other states.

Unless the petitioner Railway Company is permitted to earn revenue on all interstate shipments of lumber, it cannot pay its operating expenses or interest on its bonded indebtedness. The reports, decisions and orders of the Interstate Commerce Commission hereinbefore set out operate to confiscate said petitioner's property and to deprive it of its property without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

The petitioners Lumber Companies have performed, and are now performing, in every respect, the contracts heretofore recited to be performed by them, and have annually, since the making of said contracts, delivered to the petitioner Railway Company, and said

Railway Company has delivered to the respondents Railroad Companies, freight upon which charges to the amount of thousands of dollars have been paid. The petitioners, and each of them, are remediless, unless relief be given by this Court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded, and against the violation by the respondent Railroad Companies of the terms of the contracts between petitioners and said respondents hereinabove referred to and set out.

68 Your petitioners aver that the Commission in its finding and in that paragraph of the order which holds that the service performed by the petitioner Railway Company for the petitioners Lumber Companies, in moving logs to their mills and in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad, acted erroneously and in violation of the provisions of the Act to Regulate Commerce; your petitioners aver that under the statement of facts contained in the report and opinion of the Commission the said service is in law a service of transportation by a common carrier railroad and that in accordance with the law the petitioner Railway Company should file tariffs of its charges for said service. Under the report and order of the Commission hereinbefore set out, no tariffs lawfully can be filed covering such movement; that if such movement is transportation, the petitioner Railway Company will be subject to the penalties provided in the statute for failure to file tariffs.

Further, your petitioners aver that under the statute no common carrier can engage in interstate commerce until it has first filed tariffs covering the transportation in which it is engaged. Your petitioners Lumber Companies therefore aver that their traffic could not be handled by the petitioner Railway Company, because the findings of the Commission that the said movement is not transportation by a common carried railroad precludes the filing of tariffs. For these reasons the said order is inconsistent with the Act to Regulate Commerce and destroys the rights of the petitioners Lumber Companies to have the products of their mills moved by the petitioner Railway

69 Company, and prevents said petitioner Railway Company from transporting said products as a common carrier in interstate commerce.

Your petitioners allege that the said order of the Commission, dated October 30, 1912, by its terms is directed against the respondent Railroad Companies, among others; that the petitioners were parties to the proceedings before the Interstate Commerce Commission out of which the orders, reports and decisions complained of grew; that their rights are vitally affected by said reports, decisions and orders; that the respondent trunk line railroads have profited materially by the aforesaid reports, decisions and orders, and will so continue to profit by reason of the fact that the existing lumber rates from the junction point between the petitioner Railway Company and the said trunk line companies are the same as those which prior to May 1, 1912, applied from the petitioners Lumber Companies' mills on the line of the petitioner Railroad Company; that

therefore your petitioners allege that the said reports, decisions and orders of the said Commission as vitally affect the property rights of the petitioners as if said order was directed against the petitioner Railroad Company by name.

Your petitioners and each of them are remediless, unless relief be given by this Court by injunction and by other proper orders and decrees against the orders and requirements made by the Interstate Commerce Commission heretofore pleaded.

20. Wherefore, your petitioners say that the said reports and decisions of the Interstate Commerce Commission, and the orders of date May 14, 1912, and October 30, 1912, made in pursuance
70 of said reports and decisions, are invalid and void for the following, among other, reasons:

"(1) The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that there is any 'proprietary' lumber company or companies of the petitioner Railway Company; to declare that 'the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills, and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, and that any allowances or divisions out of the rate on account thereof are unlawful,' in so far as such declaration and order is applied to the petitioner Railway Company, or to deprive said Company of its rights as a common carrier granted to it under the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States.

(2) The Interstate Commerce Commission is wholly without power, authority or jurisdiction to declare that the transportation offered by the trunk line carriers, such as the respondent railroad companies, extends three miles distance from the line of such railroads and that an allowance may be made for the movement which is more than 1,000 feet from said line and not in excess of three miles from said line of railroad. The said holding is legislation, pure and simple, and the exercise of arbitrary and unreasonable power and constitutes a gross discrimination and violation of the Act to Regulate Commerce.

(3) Said order is unconstitutional, invalid and void, in that said order impairs the validity of the contracts hereinbefore declared upon, contrary to the provisions of the Fifth Amendment to the United States Constitution.

71 (4) Said order unduly discriminates against the petitioner Lumber Companies, as shippers, compared with shippers on the line of the petitioner Railroad and on other railroads.

(5) Said order deprives your petitioners of the through routes and joint rates provided for by Section 15 of the Interstate Commerce Act.

(6) The uncontradicted evidence in the proceeding had by the Interstate Commerce Commission under the title 'Investigation and Suspension Docket No. 11,' shows that the petitioner Railway Company is a common carrier under the law, and the finding of the

Interstate Commerce Commission that the petitioner Railway Company is not a common carrier is not based on any substantial testimony.

(7) Under the findings of fact made by the Interstate Commerce Commission, the petitioner Railway Company is a common carrier of lumber of the petitioner Lumber Companies, and of all other mills on its line of railway.

(8) The aforesaid decisions, reports and orders of the Interstate Commerce Commission require the petitioner Railway Company to maintain through routes and joint rates with its connecting carriers on traffic of others than the petitioner Lumber Companies, while forbidding the maintenance of through routes and joint rates and divisions upon lumber produced by the petitioner Lumber Companies when destined to interstate points, and thereby said order grossly and unjustly discriminates against the petitioners Lumber Companies, and subjects them to undue prejudice and disadvantage.

(9) The findings, reports, decisions and orders of the Commission hereinbefore set out are arbitrary, unreasonable and in excess of the power of the Commission, in that, among other things, the Commission compels unjust and unlawful discrimination as be-
72 tween the so-called 'tap line' railroads named in the orders hereinbefore set out."

27. Wherefore, petitioners, and each of them, pray that the said orders of the Interstate — Commission dated May 14, 1912, and October 30, 1912, be enjoined, set aside and annulled; that the United States of America, the Interstate Commerce Commission and all persons claiming to act under their authority, direction or control, be enjoined and restrained from enforcing or attempting in any wise to enforce or put in effect any portion of said orders which require the respondent Railway Companies to cease and for a period of two years thereafter abstain from maintaining through routes and joint rates upon any property transported from the mills of the petitioners Lumber Companies on the line of the petitioner Railway Company.

And your petitioners further pray that the respondents, Railroad Companies, be enjoined and restrained from violating the terms of the said contract herein pleaded and herein fully set out under the mark of Exhibit "A" and that they and each of them be specifically ordered and required to continue to observe the terms, conditions and obligations of said contract, by filing with the Interstate Commerce Commission the tariffs described and set out in paragraph 12 hereof (or similar tariffs), giving to the Louisiana & Pacific Railway Company through interstate rates, and that the Interstate Commerce Commission be specifically ordered and commanded to accept, receive and file and to permit to become effective upon three days'
73 notice the tariffs specifically described in paragraph 12 hereof, or similar tariffs.

And your petitioners pray for all other and further relief as in equity and good conscience they may be entitled to receive.

And may it please Your Honors to grant unto your petitioners a subpœna of the United States of America, issuing out of and under

the seal of this Honorable Court, directed to the United States of America; Chicago, Rock Island & Pacific Railway Company; Rock Island, Arkansas & Louisiana Railway Company, the respondents herein respectively, therein and thereby commanding them on a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath (an answer under oath being hereby expressly waived), all and singular, the premises, and to stand to, perform and abide by such order, direction or decree as may be made against them in the premises as shall seem meet and agreeable to equity and good conscience.

And your petitioners, as in duty bound, will ever pray.

WOODWORTH & LOUISIANA CENTRAL
RAILWAY COMPANY, LIMITED.
RAPIDES LUMBER COMPANY, LIMITED.
THE LONG-BELL LUMBER COMPANY,
By W. R. THURMOND,
H. M. GARWOOD,
L. M. WALTER,
Their Solicitors.

74 STATE OF MISSOURI,
County of Jackson, ss:

R. A. Long, being duly sworn, on his oath states that he is president of the petitioner The Long-Bell Lumber Company, and that he was formerly president of the petitioner Woodworth & Louisiana Central Railway Company, and of the petitioner Rapides Lumber Company.

That he has read the above and foregoing petition and is familiar with the facts therein stated and that the allegations and averments therein made and contained are true.

R. A. LONG.

Subscribed and sworn to before me this 4th day of January, 1913. My commission expires April 29, 1915.

[SEAL.] HOYT A. POORMAN,
Notary Public in and for Jackson County, Missouri.

STATE OF MISSOURI,
County of Jackson, ss:

C. B. Sweet, being duly sworn, on his oath states that he is president of the Woodworth & Louisiana Central Railway Company and of the Rapides Lumber Company, petitioners in the above entitled cause.

That he has read the above and foregoing petition and is familiar with the facts therein stated and that the allegations and averments therein made and contained are true.

C. B. SWEET.

Subscribed and sworn to before me this 4th day of January, 1913.

My commission expires April 29, 1915.

[SEAL.] HOYT A. POORMAN,

Notary Public in and for Jackson County, Missouri.

EXHIBIT "A."

Agreement made this first day of August, A. D. 1906, by and between the Rock Island, Arkansas and Louisiana Railroad Company, hereinafter called the "Rock Island Company," party of the first part; The Chicago, Rock Island and Pacific Railway Company, hereinafter called the "Chicago Company," party of the second part; the Woodworth and Louisiana Central Railway Company, Ltd., hereinafter called the "Woodworth Company," party of the third part; the Rapides Lumber Company, Ltd., hereinafter called the "Lumber Company" party of the fourth part; and the Long-Bell Lumber Company, hereinafter called the "Long-Bell Company," party of the fifth part.

The Rock Island Company is a corporation organized and existing under the laws of the State of Arkansas. It owns or operates certain railway lines in and through the States of Arkansas and Louisiana, it is now constructing a line into and through Lamourie, in the Parish of Rapides, in said State of Louisiana, and it reaches directly and through its connections, a large number of markets wherein

76 the products of the Lumber Company or of the Long-Bell Company, or of companies owned or controlled by the said Lumber Company or by the Long-Bell Company, or either of them, can be sold.

The Chicago Company is a consolidated corporation organized and existing under the laws of the States of Illinois and Iowa. It is the lessee under a lease for a period of nine hundred and ninety-nine (999) years, of the existing railway of the Rock Island Company, and of the railways or extensions of railways hereafter constructed or acquired by it; that portion of the railway of the Rock Island Company now being constructed into and through Lamourie, as aforesaid, will, when completed, become a part of the railway to which said lease applies.

The Woodworth Company is a corporation organized and existing under the laws of the State of Louisiana, being duly authorized to construct, own and operate a steam railroad. It has, at the request of the Lumber Company, and the Long-Bell Company, built a line of railway from Nelson to Lamourie, both being in the Parish of Rapides and State of Louisiana, as hereinafter more particularly set forth. Said line of railway will connect with the line of the Rock Island Company at Lamourie, when the latter is completed, will largely traverse the timber lands of the Lumber Company, or of the Long-Bell Company, or of companies owned or controlled by the said Lumber Company and the Long-Bell Company, or either of

them, and, in connection with the railway of the Rock Island Company, and of the Chicago Company, will furnish railway facilities for the transportation of the timber of the Lumber Company, or
of the Long-Bell Company, and of the companies owned or
77 controlled by the Lumber Company and the Long-Bell Company, or either of them, from the forest to the different mills of the Lumber Company, or of the Long-Bell Company, and of companies owned or controlled by the said Lumber Company and the Long-Bell Company, or either of them, on said line of railway, and the transportation of the products thereof to the markets the Lumber Company and the Long-Bell Company desires to reach for itself and companies owned or controlled by it.

The Lumber Company is a corporation organized and existing under the laws of the State of Louisiana, and owns or controls large tracts of timber land in the Parish of Rapides in said state, all of which are tributary to the said proposed line of railway of the Woodworth Company, and is extensively engaged in the business of cutting the timber on such land and marketing the products thereof. The transaction of the business of the Lumber Company and of the Long-Bell Company, and of companies owned or controlled by them, or either of them, is hampered and less profitable than it should be because of lack of adequate railway facilities and means for the transportation of the timber from the forest to its mills, and for the lack of facilities and means by which the products of said timber may be transported from the said mills to the most advantageous markets. For the proper, economical and profitable conduct of its business, it arranged with the Woodworth Company to construct and operate said proposed line of railway. In furtherance of this purpose the Woodworth Company and the Lumber Company have requested the Rock Island Company to permit the Woodworth Company to make a track connection with its line and to enter into this
agre-ment.

78 The Long-Bell Company is a corporation organized and existing under the laws of the State of Missouri. It owns or controls the property and franchises of the Lumber Company through stock ownership thereof, and has also requested the Rock Island Company to permit the Woodworth Company to make a track connection with its line and to enter into this agreement.

The several parties hereto, because of the mutual advantages accruing to them hereby, are willing to enter into this agreement.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, and of the sum of one dollar by each party hereto to the other parties paid, the parties hereto have covenanted and agreed, and do hereby covenant and agree, each with the others, as follows:

1. The Woodworth Company covenants and agrees that it will, with all convenient speed and dispatch, provide its said railroad with the necessary side or spur tracks and other appurtenances necessary to a railway ready for the operation of trains thereover, from Nelson, Louisiana, to Lamourie, Louisiana, and to connect said line with

the line of railway of the Rock Island Company at Lamourie, in the Parish of Rapides and State of Louisiana.

2. The Rock Island Company hereby grants to the Woodworth Company, during the existence of this agreement, the right to connect the above described line of railway of the Woodworth Company with the line of railway of the Rock Island Company at such
79 convenient point in or near Lamourie as shall be designated by the Rock Island Company, and also the right thereafter for a like term to operate the same, under such rules and regulations therefor as shall from time to time be adopted by the Rock Island Company.

3. The Rock Island Company and the Woodworth Company agree that during the existence of this agreement they will interchange business with each other at said point of connection of their respective lines, and, by means thereof, will establish a through line of railway with traffic thereover, on the basis of the divisions of rates as hereinafter set forth.

4. The Lumber Company and the Long-Bell Company covenant and agree with the Woodworth Company, for its benefit and that of the Rock Island Company and of the Chicago Company, to ship and cause to be shipped each and every month during the existence of this agreement, over the line of railway of the Woodworth Company, from the forest to the mills of the Lumber Company and of the Long-Bell Company, and of companies owned or controlled by the Lumber Company and by the Long-Bell Company, all the timber cut by the Lumber Company and all companies owned or controlled by the said Lumber Company and by the Long-Bell Company from all their lands (including all lands controlled directly or indirectly by them, or by any subsidiary company of the Lumber Company or the Long-Bell Company, or by any company controlled by or in which the Lumber Company or the Long-Bell Company holds a controlling interest) which they or either of them now own or may hereafter acquire along or contiguous to the said line of rail-
80 road of the Woodworth Company, and that they will ship at least fifty per centum (50%) of all the products of said mills to said point of connection at Lamourie over the line of railroad of the Woodworth Company; and thence over the line of railway of the Rock Island Company, and of the Chicago Company and their connections, to the points of destination thereof, and the Woodworth Company covenants and agrees with the Rock Island Company and with the Chicago Company, during the existence of this agreement, to deliver to the Rock Island Company, or to the Chicago Company, at said point of connection at Lamourie, said amount of at least fifty per centum (50%) of all the products of said mills, as hereinbefore mentioned, for the purpose of having the same transported from the said point of connection over the lines of railway of the Rock Island Company and of the Chicago Company, and their connections, to the points of destination thereof; provided, however, that if thereafter the Lumber Company or the Long-Bell Company shall acquire timber lands along or contiguous to the line of railway of the Woodworth Company, the owners of which shall require, as a condition of the sale thereof, that all or a part of the timber and products of

timber from the same, shall be shipped over some other line or lines of railway than that of the Rock Island Company, then, and in such case, the provisions of this agreement shall not apply to such lands or to the timber or products of timber therefrom, in so far as they may be in necessary conflict with the said condition of sale of such after-acquired lands.

81 5. The Rock Island Company and the Chicago Company agree, during the existence of this agreement, to accept from the Woodworth Company all shipments by it offered, to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Woodworth Company with cars, as requested by it from time to time, to a number sufficient for transporting at least fifty per centum (50%) of all the products of the mills of the Lumber Company and of the Long-Bell Company, and all companies owned or controlled by them, or either of them. It is understood and agreed, however, that if the Rock Island Company or the Chicago Company shall fail during any calendar month to furnish the number of cars required by the Woodworth Company and necessary in order to transport fifty per centum (50%) of the products of said mills during said month, then in such event the Rock Island Company or the Chicago Company shall not be obliged thereafter to make up such deficit of cars in any such calendar month, nor shall the Woodworth Company be obliged thereafter to furnish freight to make up such deficit on account of such failure of said Rock Island Company or of the Chicago Company to furnish cars in such calendar month.

6. The Rock Island Company, the Chicago Company and the Woodworth Company agree each with the other that they will enter into joint tariffs relating to the joint traffic over their respective lines, and to file the same with the Interstate Commerce Commission and to publish the same in the manner and form as required by law.

82 7. It is further agreed that no per diem charges shall be made by either the Rock Island Company, the Chicago Company or the Woodworth Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six (6) days after each delivery; but all per diem charges accruing on cars after the expiration of said period of six (6) days from the date of delivery thereof by one of said parties to the other, shall be paid by the party using and holding said cars to the other of said parties.

8. The cost and expense of constructing, maintaining and renewing such connecting, interchange or side tracks as may be necessary to properly handle the business of the Woodworth Company at said point of connection at Lamourie, shall be borne and paid jointly and equally by the Woodworth Company and the Rock Island Company.

9. The Lumber Company and the Long-Bell Company further covenant and agree with the Woodworth Company and the Rock Island Company and the Chicago Company, to deliver or cause to be delivered, to the Woodworth Company, for transportation over the railway of the Rock Island Company and of the Chicago Company, to points on or reached by way of the railways or some of them constituting the railway lines or systems of which the Rock Island

Company or the Chicago Company shall form a part, at least fifty per centum (50%) of all outbound shipments of lumber and other products of the mills of the Lumber Company or of the Long-Bell Company, and of all companies owned or controlled by them
83 or either of them, each and every month during the existence of this agreement, and in every such case the Lumber Company and the Long-Bell Company shall cause or permit such shipments to be so routed as to give to the railways constituting the railway lines or system of which the Rock Island Company and the Chicago Company are a part, such haul as shall yield to them the largest revenue.

10. In respect to the division of freight rates between the Woodworth Company and the Rock Island Company and the Chicago Company, the Woodworth Company and the Rock Island Company and the Chicago Company hereby agree to the following divisions, during the existence of this agreement:

"On all lumber shipments originating on the line of the Woodworth Company, the Woodworth Company shall receive thirty-five (35) per centum of the through rate, with a maximum of five and one-half (5½) cents per hundred pounds."

It is agreed that the above division of through rates shall include delivery of shipments to the Rock Island Company, or to the Chicago Company, and are based upon the present through rates. It is agreed that if, at any time during the existence of this agreement, the through rates shall be reduced, the maximum of five and one-half cents per hundred-weight due to the Woodworth Company shall be reduced in proportion to said reduction of through rate.

The Rock Island Company and the Chicago Company agree
84 that they will, at all times during the existence of this agreement, publish for all territory east of the Mississippi River and north of the Ohio River, and points on and west of the Mississippi River on the lines of the Rock Island and Frisco systems and their connections, the same freight rates from points on the Woodworth Company's line as are or shall be in effect from Alexandria on the Rock Island Company's line.

On all commodities of traffic, other than lumber, which may be interchanged between the Woodworth and the Rock Island Companies and the Chicago Company, the said companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana.

11. The Woodworth Company and the Rock Island Company and the Chicago Company agree that each company shall be amenable to the other company for the prompt and proper handling of all cars of the other company, or cars of other companies not parties thereto, which it may handle; that in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, excepting as to per diem charges as hereinbefore provided for, and that no cars of either company shall be used locally by the other company.